

1 HAGENS BERMAN SOBOL SHAPIRO LLP  
2 STEVE W. BERMAN (*pro hac vice to be filed*)  
3 THOMAS E. LOESER (BAR NO. 202724)  
4 1918 Eighth Avenue, Suite 330  
5 Seattle, WA 98101  
6 Telephone: (206) 623-7292  
7 Facsimile: (206) 623-0594  
8 steve@hbsslaw.com  
9 toml@hbsslaw.com

10 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
11 JOHN B. QUINN (BAR NO. 090378)  
12 SHON MORGAN (BAR NO. 187736)  
13 865 South Figueroa Street, 10th Floor  
14 Los Angeles, California 90017-2543  
15 Telephone: (213) 443 3000  
16 Facsimile: (213) 443 3100  
17 shonmorgan@quinnemanuel.com

18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA  
20 WESTERN DIVISION

21 JESS HILL, KEVIN JENTES, MALIA  
22 SIAS, ARTHUR SCHAREIN, MICHAEL  
23 BOZINE, CLIFFORD BROUSSARD,  
24 VICTORIA MCCLELLAND,  
25 JEREMIAH HOLDEN, HILDEGARD  
26 REISER, M.D., SPENCER MOORE,  
27 JOHN GAUGER, HANAA RIFAEY,  
28 DEBORAH MARKWARD, JOHN  
BROWN, CHRISTINA PAOLICCHI,  
ADAM FRUGOLI, TRACEY ROSEN,  
JEFFREY BRADY, BOUALIVANH  
PHANHPHONGSANE, BRENDA  
PENNEY, MICHAEL ANTIS, ALEX  
ARCENEUX, G. KEATING PEPPER,  
DEVAN WANG, ROBERT HOOKER,  
MATTHEW OLOVSON, WILLIAM

No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

1 MACKEY, EDWARD SIMMONS,  
2 CHARLES HALL, KOTAB HOLDINGS  
3 LLC, ALAN BRANTING, CHAD  
4 RAMOS, STEVEN BOLDUC, JOSEPH  
5 AVENA, ANDREW MASTERS,  
6 STEVEN KOLPAN, PAUL PURYEAR,  
7 MICHELLE GRAMLING, DAVID  
8 PYLE, HEATHER GREENFIELD,  
9 KYLE BOYLAN, RALPH  
10 MENDENHALL, ALEXANDER  
11 BAITTINGER, ANDREW BELL, GARY  
12 VAN GUILDER, BARRY CROSS,  
13 JUSTIN HOLLOWAY, KELLY KING,  
14 KAREN NORMAN, ANDREW  
15 VENTURA, TROY PONTO, SCOTT  
16 TAYLOR, CARLOS ORTIZ, and BRIAN  
17 MILLS, on behalf of themselves and all  
18 others similarly situated,

19  
20 Plaintiffs,

21 v.

22 VOLKSWAGEN GROUP OF  
23 AMERICA, INC., a New Jersey  
24 Corporation, and VOLKSWAGEN AG, a  
25 corporation organized under the laws of  
26 Germany,

27 Defendants.  
28

---

CLASS ACTION COMPLAINT

# TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. FACTUAL ALLEGATIONS.....	3
A. EPA and State Regulations Place a Premium on the Reduction of Pollutants that Cause Smog and Are Harmful to Human Health.....	3
B. Volkswagen Falsely Pitched Itself as a Leader in Environmental Issues .....	4
C. Volkswagen Falsely Marketed its Diesel Engine Systems as Clean and Green .....	5
D. Volkswagen’s CleanDiesel Engine Systems Were a Fraud.....	13
E. Volkswagen Profited From its Fraud.....	16
F. Volkswagen’s False Advertising and Fraud Has Profoundly Harmed Owners of Affected Vehicles.....	17
III. JURISDICTION.....	20
IV. VENUE.....	20
V. PARTIES.....	20
A. California Plaintiffs.....	20
1. Jess Hill.....	20
2. Kevin Jentes.....	21
3. Malia Sias .....	22
B. Alabama Plaintiffs.....	22
1. Arthur Scharein.....	22
C. Alaska Plaintiffs.....	23
1. Michael Bozine .....	23
D. Arizona Plaintiffs .....	23
1. Clifford Broussard .....	23
E. Arkansas Plaintiffs .....	24
1. Victoria McClelland .....	24

1	F.	Colorado Plaintiffs .....	25
2	1.	Jeremiah Holden .....	25
3	2.	Hildegard Reiser, M.D.....	25
4	G.	Connecticut Plaintiffs.....	26
5	1.	Spencer Moore .....	26
6	H.	Delaware Plaintiffs.....	26
7	1.	John Gauger .....	26
8	I.	District of Columbia Plaintiffs.....	27
9	1.	Hanaa Rifaey.....	27
10	J.	Florida Plaintiffs.....	28
11	1.	Deborah Markward .....	28
12	K.	Georgia Plaintiffs .....	28
13	1.	John Brown .....	28
14	L.	Hawaii Plaintiffs.....	29
15	1.	Christina Paolicchi.....	29
16	M.	Idaho Plaintiffs .....	30
17	1.	Adam Frugoli.....	30
18	N.	Illinois Plaintiffs.....	30
19	1.	Tracey Rosen .....	30
20	O.	Indiana Plaintiffs .....	31
21	1.	Jeffrey Brady.....	31
22	P.	Iowa Plaintiffs .....	31
23	1.	Boualivanh Phanphongsane.....	31
24	Q.	Kansas Plaintiffs.....	32
25	1.	Brenda Penney .....	32
26	R.	Kentucky Plaintiffs.....	33
27	1.	Michael Antis.....	33
28	S.	Louisiana Plaintiffs .....	33

1	1.	Alex Arceneaux .....	33
2	T.	Maine Plaintiffs.....	34
3	1.	G. Keating Pepper.....	34
4	U.	Maryland Plaintiffs.....	35
5	1.	Devan Wang .....	35
6	V.	Massachusetts Plaintiffs.....	35
7	1.	Robert Hooker.....	35
8	W.	Michigan Plaintiffs.....	36
9	1.	Matthew Olovson.....	36
10	X.	Minnesota Plaintiffs .....	36
11	1.	William Mackey .....	36
12	Y.	Mississippi Plaintiffs.....	37
13	1.	Edward Simmons.....	37
14	Z.	Missouri Plaintiffs.....	38
15	1.	Charles Hall .....	38
16	AA.	Montana Plaintiffs.....	38
17	1.	Kotab Holdings LLC .....	38
18	BB.	Nebraska Plaintiffs.....	39
19	1.	Alan Branting.....	39
20	CC.	Nevada Plaintiffs.....	40
21	1.	Chad Ramos .....	40
22	DD.	New Hampshire Plaintiffs.....	40
23	1.	Steven Bolduc .....	40
24	EE.	New Jersey Plaintiffs .....	41
25	1.	Joseph Avena .....	41
26	FF.	New Mexico Plaintiffs .....	41
27	1.	Andrew Masters.....	41
28	GG.	New York Plaintiffs .....	42

1	1. Steven Kolpan.....	42
2	HH. North Carolina Plaintiffs.....	43
3	1. Paul Puryear.....	43
4	II. North Dakota Plaintiffs .....	43
5	1. Michelle Gramling.....	43
6	JJ. Ohio Plaintiffs .....	44
7	1. David Pyle.....	44
8	KK. Oklahoma Plaintiffs .....	44
9	1. Heather Greenfield.....	44
10	LL. Oregon Plaintiffs .....	45
11	1. Kyle Boylan .....	45
12	MM. Pennsylvania Plaintiffs.....	46
13	1. Ralph Mendenhall.....	46
14	NN. Rhode Island Plaintiffs.....	46
15	1. Alexander Baittinger.....	46
16	OO. South Carolina Plaintiffs.....	47
17	1. Andrew Bell.....	47
18	PP. South Dakota Plaintiffs .....	47
19	1. Gary Van Guilder .....	47
20	QQ. Tennessee Plaintiffs .....	48
21	1. Barry Cross .....	48
22	RR. Texas Plaintiffs.....	49
23	1. Justin Holloway .....	49
24	SS. Utah Plaintiffs .....	49
25	1. Kelly King.....	49
26	TT. Vermont Plaintiffs.....	50
27	1. Karen Norman.....	50
28	UU. Virginia Plaintiffs.....	51

1	1. Andrew Ventura.....	51
2	VV. Washington Plaintiffs.....	51
3	1. Troy Ponto .....	51
4	WW. West Virginia Plaintiffs .....	52
5	1. Scott Taylor.....	52
6	XX. Wisconsin Plaintiffs .....	52
7	1. Carlos Ortiz.....	52
8	YY. Wyoming Plaintiffs .....	53
9	1. Brian Mills .....	53
10	ZZ. Defendants.....	54
11	VI. TOLLING OF THE STATUTE OF LIMITATIONS .....	55
12	A. Discovery Rule Tolling.....	55
13	B. Fraudulent Concealment Tolling .....	56
14	C. Estoppel.....	56
15	VII. CLASS ALLEGATIONS.....	57
16	VIII. VIOLATIONS ALLEGED .....	70
17	A. Claims Brought on Behalf of the Nationwide Class and the Virginia Subclass Under Virginia Law .....	70
18	B. Claims on Behalf of the Alabama Subclass.....	78
19	C. Claims on Behalf of the Alaska Subclass .....	84
20	D. Claims Brought on Behalf of the Arizona Subclass .....	90
21	E. Claims on Behalf of the Arkansas Subclass .....	95
22	F. Claims Brought on Behalf of the California Subclass.....	105
23	G. Claims Brought on Behalf of the Colorado Subclass .....	116
24	H. Claims Brought on Behalf of the Connecticut Subclass.....	123
25	I. Claims Brought on Behalf of the Delaware Subclass.....	128
26	J. Claims Brought on Behalf of the District of Columbia Subclass.....	138
27	K. Claims Brought on Behalf of the Florida Subclass.....	147
28		

1	L.	Claims Brought on Behalf of the Georgia Subclass .....	155
2	M.	Claims Brought on Behalf of the Hawaii Subclass.....	165
3	N.	Claims Brought on Behalf of the Idaho Subclass .....	174
4	O.	Claims Brought on Behalf of the Illinois Subclass.....	184
5	P.	Claims Brought on Behalf of the Indiana Subclass .....	194
6	Q.	Claims Brought on Behalf of the Iowa Subclass .....	200
7	R.	Claims Brought on Behalf of the Kansas Subclass.....	205
8	S.	Claims Brought on Behalf of the Kentucky Subclass.....	215
9	T.	Claims Brought on Behalf of the Louisiana Subclass .....	225
10	U.	Claims Brought on Behalf of the Maine Subclass.....	235
11	V.	Claims Brought on Behalf of the Maryland Subclass.....	241
12	W.	Claims Brought on Behalf of the Massachusetts Subclass .....	250
13	X.	Claims Brought on Behalf of the Michigan Subclass.....	254
14	Y.	Claims Brought on Behalf of the Minnesota Subclass .....	264
15	Z.	Claims Brought on Behalf of the Mississippi Subclass.....	278
16	AA.	Claims Brought on Behalf of the Missouri Subclass.....	288
17	BB.	Claims Brought on Behalf of the Montana Subclass.....	298
18	CC.	Claims Brought on Behalf of the Nebraska Subclass .....	308
19	DD.	Claims Brought on Behalf of the Nevada Subclass.....	317
20	EE.	Claims on Behalf of the New Hampshire Subclass .....	326
21	FF.	Claims Brought on Behalf of the New Jersey Subclass.....	336
22	GG.	Claims Brought on Behalf of the New Mexico Subclass .....	340
23	HH.	Claims Brought on Behalf of the New York Subclass .....	350
24	II.	Claims Brought on Behalf of the North Carolina Subclass .....	356
25	JJ.	Claims Brought on Behalf of the North Dakota Subclass .....	360
26	KK.	Claims Brought on Behalf of the Ohio Subclass .....	370
27	LL.	Claims Brought on Behalf of the Oklahoma Subclass .....	376
28	MM.	Claims Brought on Behalf of the Oregon Subclass .....	386



1            NN. Claims Brought on Behalf of the Pennsylvania Subclass..... 395

2            OO. Claims Brought on Behalf of the Rhode Island Subclass..... 405

3            PP. Claims on Behalf of the South Carolina Subclass ..... 414

4            QQ. Claims on Behalf of the South Dakota Subclass ..... 425

5            RR. Claims Brought on Behalf of the Tennessee Subclass ..... 434

6            SS. Claims Brought on Behalf of the Texas Subclass..... 443

7            TT. Claims Brought on Behalf of the Utah Subclass ..... 449

8            UU. Claims Brought on Behalf of the Vermont Subclass..... 459

9            VV. Claims Brought on Behalf of the Washington Subclass..... 468

10          WW. Claims Brought on Behalf of the West Virginia Subclass ..... 477

11          XX. Claims Brought on Behalf of the Wisconsin Subclass ..... 483

12          YY. Claims Brought on Behalf of the Wyoming Subclass ..... 493

13          REQUEST FOR RELIEF ..... 499

14          DEMAND FOR JURY TRIAL ..... 499

1 Plaintiffs Jess Hill, Kevin Jentes, Malia Sias, Arthur Scharein, Michael Bozine,  
 2 Clifford Broussard, Victoria McClelland, Jeremiah Holden, Hildegard Reiser, M.D.,  
 3 Spencer Moore, John Gauger, Hanaa Rifaey, Deborah Markward, John Brown,  
 4 Christina Paolicchi, Adam Frugoli, Tracey Rosen, Jeffrey Brady, Boualivanh  
 5 Phanphongsane, Brenda Penney, Michael Antis, Alex Arceneaux, G. Keating Pepper,  
 6 Devan Wang, Robert Hooker, Matthew Olovson, William Mackey, Edward Simmons,  
 7 Charles Hall, Katob Holdings LLC, Alan Branting, Chad Ramos, Steven Bolduc,  
 8 Joseph Avena, Andrew Masters, Steven Kolpan, Paul Puryear, Michelle Gramling,  
 9 David Pyle, Heather Greenfield, Kyle Boylan, Ralph Mendenhall, Alexander  
 10 Baittinger, Andrew Bell, Gary Van Guilder, Barry Cross, Justin Holloway, Kelly  
 11 King, Karen Norman, Andrew Ventura, Troy Ponto, Scott Taylor, Carlos Ortiz, and  
 12 Brian Mills (“Plaintiffs”), individually and on behalf of all others similarly situated  
 13 (the “Class”), allege the following:

## 14 I. INTRODUCTION

15 1. The United States Government, through the Environmental Protection  
 16 Agency, as well as individual state regulators, have passed and enforced laws designed  
 17 to protect their citizens from pollution and in particular, certain chemicals and agents  
 18 known to cause disease in humans. Automobile manufacturers must abide by these  
 19 laws and must adhere to state and EPA rules and regulations. This case arises because  
 20 Defendants Volkswagen AG and Volkswagen Group of America (collectively,  
 21 “Volkswagen”) purposefully and intentionally breached the laws of the United States  
 22 and the rules and regulations of various states and the EPA by selling in the United  
 23 States Volkswagen and Audi vehicles that purposefully evaded federal and state laws.  
 24 As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and  
 25 Compliance Assurance at the EPA: “Using a defeat device in cars to evade clean air  
 26  
 27  
 28

1 standards is illegal and a threat to public health.” Yet that is exactly what Volkswagen  
2 did in its 2009-2015 Volkswagen and Audi CleanDiesel vehicles.<sup>1</sup>

3 2. As detailed in the EPA’s Notice of Violation (“NOV”), sophisticated  
4 software in the Volkswagen and Audi diesel vehicles sold by Volkswagen in the  
5 United States detects when the vehicle is undergoing official emissions testing and  
6 turns full emissions controls on during the test. But otherwise, at all other times that  
7 the vehicle is running, the emissions controls are suppressed. This results in cars that  
8 meet emissions standards in the laboratory or testing station, but during normal  
9 operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under  
10 federal and state laws and regulations. The software produced and used by  
11 Volkswagen is a defeat device as defined by the Clean Air Act.

12 3. By manufacturing and selling cars with defeat devices that allowed for  
13 higher levels of emissions than what was certified to EPA, and higher levels than state  
14 and federal regulations allow, Volkswagen violated the Clean Air Act and state  
15 regulations, defrauded its customers, and engaged in unfair competition under state  
16 and federal law.

17 4. According the EPA NOV and admitted by Volkswagen, Volkswagen  
18 installed its defeat device in at least the following diesel models of its vehicles (the  
19 “Affected Vehicles”): MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY  
20 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.  
21 Discovery may reveal that additional vehicle models and model years are properly  
22 included as Affected Vehicles.

23 5. Plaintiffs bring this action individually and on behalf of all other current  
24 and former owners or lessees of Affected Vehicles. Plaintiffs seek damages,  
25 injunctive relief, and equitable relief for the conduct of Volkswagen related to the  
26 defeat device, as alleged in this Complaint. Specifically, Plaintiffs seek: the return of  
27

---

28 <sup>1</sup> See Sept. 18, 2015 EPA News Release.

1 the premium that they paid for a CleanDiesel over the cost of the same model and trim  
 2 of car with a gasoline engine; restitution of the purchase price of their car should any  
 3 “fix” installed by Volkswagen result in a degradation of performance and/or fuel  
 4 efficiency; compensation for any additional sums spent of fuel or maintenance as a  
 5 result of any “fix”; restitution for purchase of extended warranties that will go unused;  
 6 and a lump sum for remediation of the environmental damage Plaintiffs and the Class  
 7 unwittingly contributed to by driving cars that they believed were clean, but were in  
 8 fact in violation of state and EPA regulations and the Clean Air Act.

## 9 II. FACTUAL ALLEGATIONS

### 10 A. EPA and State Regulations Place a Premium on the Reduction of 11 Pollutants that Cause Smog and Are Harmful to Human Health

12 6. The Clean Air Act, enacted in 1970, is a comprehensive federal law that  
 13 regulates air emissions from stationary and mobile sources. 42 U.S.C. § 7401, et seq.  
 14 (1970). Congress determined that “the increasing use of motor vehicles . . . has  
 15 resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42  
 16 U.S.C. § 7401(a)(2). The Clean Air Act and the regulations under it, as well as state  
 17 regulations, were passed and are intended to reduce the emission of NO<sub>x</sub> and other  
 18 pollutants, thereby protecting human health and the environment.

19 7. NO<sub>x</sub> contributes to nitrogen dioxide, ground-level ozone, and fine  
 20 particulate matter. When humans are exposed to nitrogen dioxide, they may be at a  
 21 greater risk for serious health dangers, including asthma attacks and other respiratory  
 22 illness requiring hospitalization. Ozone and particulate matter exposure have been  
 23 associated with premature death due to respiratory-related or cardiovascular-related  
 24 effects. Children, the elderly, and people with pre-existing respiratory illness are at an  
 25 elevated risk for adverse health consequences associated with these pollutants.

26 8. The Clean Air Act requires car makers to certify that vehicles sold in the  
 27 United States meet federal emissions standards. The EPA certifies conformity with  
 28

1 regulations to car makers for vehicles that satisfy emissions regulations. To be sold in  
2 the United States, a vehicle must be certified by the EPA to comply with its  
3 regulations.

4 9. The Clean Air Act makes it a violation for “any person to manufacture or  
5 sell, or offer to sell, or install, any part or component intended for use with, or as part  
6 of, any motor vehicle or motor vehicle engine, where a principal effect of the part or  
7 component is to bypass, defeat, or render inoperative any device or element of design  
8 installed on or in a motor vehicle or motor vehicle engine in compliance with  
9 regulations under this subchapter, and where the person knows or should know that  
10 such part or component is being offered for sale or installed for such use or put to such  
11 use.”

12 10. The Clean Air Act defines a “defeat device” as one “that reduces the  
13 effectiveness of the emission control system under conditions which may reasonably  
14 be expected to be encountered in normal vehicle operation use.” When a defeat device  
15 is in place, it can bypass, defeat, or render inoperative elements of the vehicle’s  
16 emission control system that are put in place to ensure compliance with the Clean Air  
17 Act. Motor vehicles that are equipped with defeat devices cannot be certified by the  
18 EPA.<sup>2</sup>

19 11. California’s emission standards are even more stringent than EPA  
20 standards. Several states have adopted California’s standards and also demand even  
21 more from car makers than the EPA. The California emissions regulator is called the  
22 California Air Resources Board, or CARB.

## 23 **B. Volkswagen Falsely Pitched Itself as a Leader in Environmental Issues**

24 12. Volkswagen is a German automotive company that manufactures and  
25 sells vehicles under the Volkswagen, Audi, Porsche and other brand names with  
26 operations in approximately 150 countries, including the United States. In the first half

27 <sup>2</sup> EPA, Advisory Circular Number 24: Prohibition on use of Emission Control  
28 Defeat Device (Dec. 11, 1972).

1 of 2015, Volkswagen surpassed Toyota as the world's largest automaker by sales,  
 2 selling 5.04 million vehicles in the first six months of the year. By July 2015,  
 3 Volkswagen ranked eighth on the Fortune Global 500 list of the world's largest  
 4 companies.

5 13. Despite Volkswagen's ascension to become the world's biggest  
 6 automaker, Volkswagen sales lagged in the United States. Volkswagen has sought to  
 7 improve sales in the United States by touting the performance and reliability of its  
 8 vehicles and its environmental leadership. Volkswagen's 2013 Annual Report  
 9 emphasizes that "Volkswagen intends to become the global economic and  
 10 environmental leader among automobile manufactures by 2018" and that "[w]e are  
 11 focusing in particular on the environmentally friendly orientation and profitability of  
 12 our vehicle projects."

13 **C. Volkswagen Falsely Marketed its Diesel Engine Systems as Clean and**  
 14 **Green**

15 14. Volkswagen broadly boasted about the performance and environmental  
 16 cleanliness of its engine systems. In an October 2008 press release, Volkswagen  
 17 bragged:

18 The Jetta TDI is amongst the ten most fuel efficient vehicles  
 19 on the US market. In the recently published "Fuel Economy  
 20 Guide 2009" the EPA (Environmental Protection Agency)  
 listed the Jetta TDI in the top ten low consumption and low  
 emissions vehicles.

21 In the current edition of the publication, the Jetta 2.0 l Clean  
 22 TDI, introduced to the market two months ago, is praised  
 23 particularly for its excellent consumption figures - it has a  
 24 fuel consumption of 5.7 litre per 100 kilometre. Moreover,  
 25 the Jetta Clean TDI also fulfils stringent Californian  
 26 emission standards. This was achieved through  
 27 modifications within the engine and ***by implementing an***  
 28 ***exhaust treatment system developed especially by***  
***Volkswagen and which reduces nitrogen oxide emissions***  
***(NOx) by up to 90 percent.*** The central element of the

1 exhaust treatment system is the NOx storage catalytic  
2 converter.<sup>3</sup>

3 15. Since introducing the 2.0L TDI CleanDiesel engine in 2008, Volkswagen  
4 has touted it as a “fantastic power train” that “gives very good fuel economy” and “is  
5 also good for the environment because it puts out 25% less greenhouse gas emissions  
6 than what a gasoline engine would . . . cuts out the particulate emissions by 90% and  
7 the emissions of nitrous oxide are cut by 95% . . . [and is] clean enough to be certified  
8 in all 50 states.”<sup>4</sup>

9 16. The TDI CleanDiesel engines are turbocharged and directly inject fuel  
10 into each cylinder via fuel injectors. Volkswagen has stated, “[t]he superior qualities  
11 of the 2.0 Liter TDI engine with common rail injection systems are oriented towards  
12 future challenges in acoustics, comfort, and exhaust gas after-treatment . . . confirming  
13 Volkswagen’s role as a pioneer in diesel technology.”

14 17. Volkswagen has marketed and advertised its CleanDiesel models as  
15 extraordinarily clean, EPA certified in all 50 states, and powerful. For example, the  
16 following promotional material was used in 2010, and similar materials have been  
17 used across the spectrum of models using the CleanDiesel engine system:

18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>3</sup> See [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2008/10/vw\\_in\\_fuel\\_economy\\_guide.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html) (last accessed Sept. 23, 2015) (emphasis added).

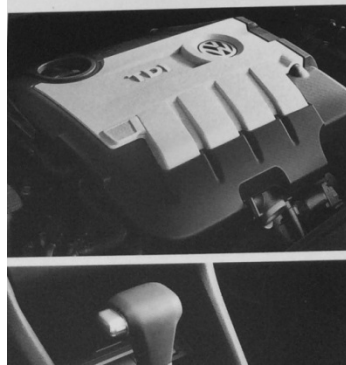
27 <sup>4</sup> Statement of Volkswagen Group of America, Inc.’s Chief Operating Officer Mark  
28 Barnes, to The Business Insider, October 9, 2009.



## Burn rubber, not money.

The all-new 2010 Golf TDI Clean Diesel offers fuel efficiency,\* power, and performance. Or, in other words, it's a lean, mean, cleaner-burning machine. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% fewer sooty emissions than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of street-savvy torque that brings a smile to every stoplight. It's efficient, using a turbocharger and smart exhaust design to use fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars that are certified in all 50 states. And best of all, it will help save you money, with an out-of-this-world EPA-estimated mileage of 30 city/42 highway mpg (automatic)\* and over 594 miles on a single tank of fuel.\*\*

If efficiency and savings weren't enough, the Golf TDI model also gives you premium features like the multi-function leather steering wheel, the touchscreen Premium VIII radio with a Media Device Interface (MDI) and iPod® cable, SIRIUS® Satellite Radio, a 6-speed manual transmission, fog lights, and the optional navigation package with touchscreen navigation to efficiently find your way to the bank.



"Good, clean fun" takes on  
a whole new meaning.



18. Volkswagen's advertising, which keyed on the unique combination of clean, efficient and highly performing, was very effective. In fact, Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

19. In an October 2009 interview with Business Insider, when asked "[w]hat is the advantage of a diesel over a hybrid," VW of America's Chief Operating officer, Mark Barnes, stated: "It's also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So, a very very clean running engine. Clean enough to be certified in all 50 states."<sup>5</sup>

<sup>5</sup> Gayathri Vaidyanathan, *Volkswagen Preps for a Diesel Revolution*, The Business Insider, Oct. 9, 2009, <http://www.businessinsider.com/volkswagen-preps-for-diesel-revolution-2009-10>.

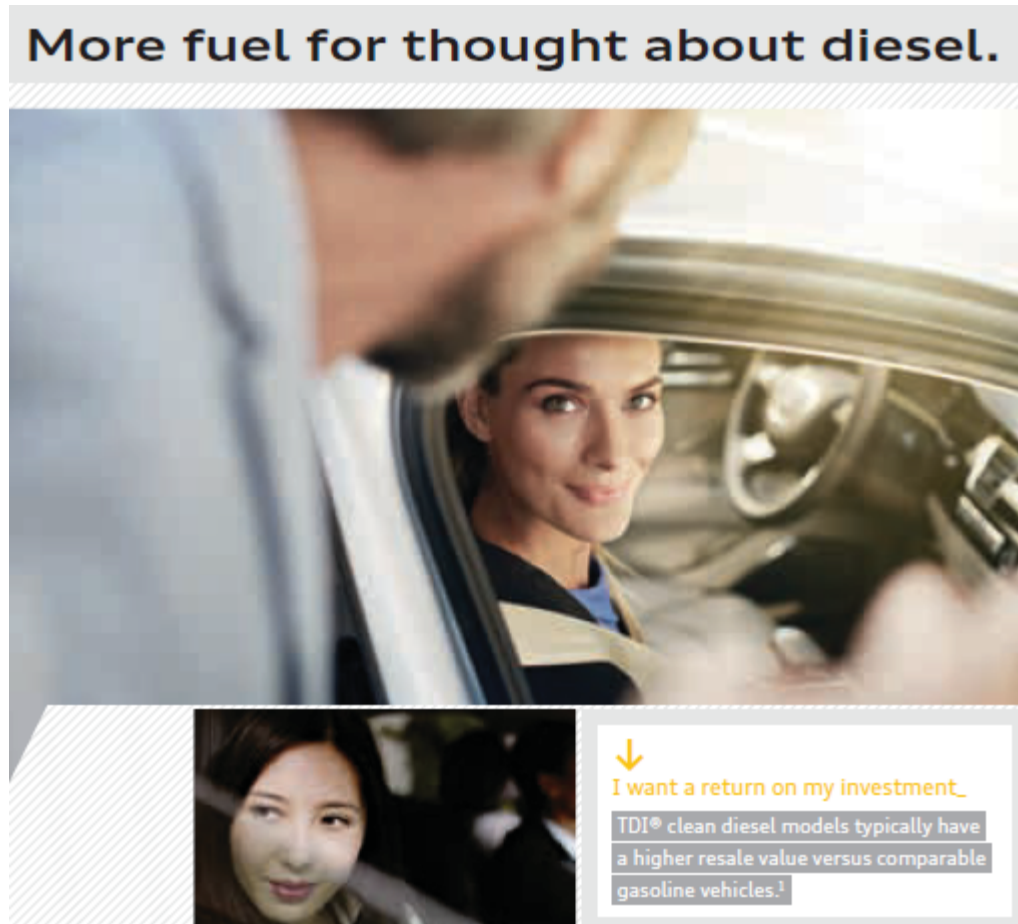


20. Volkswagen doubled-down on “clean” and “green” vehicles. Being highly efficient, fun, and “clean” are the central messages for Volkswagen’s diesel engine campaign.

21. Volkswagen also touted the performance characteristics of the TDI CleanDiesel, claiming that clean emission technology did not sacrifice its 236 lbs/ft of torque and turbocharged CleanDiesel engine. In a recent 2015 Volkswagen Golf sales brochure, Volkswagen stated “With the 2.0L TDI engine, you’ll appreciate every fuel-efficient mile with the EPA-estimated 45 hwy mpg. But that’s only half the story. Step on the pedal and feel the 236 lb-ft of torque and let the performance tell the other half.”



22. Volkswagen also claimed that TDI Clean Diesel models “typically have a higher resale value versus comparable gasoline vehicles”:



23. But even when Volkswagen knew that EPA investigators had discovered—or at the very least suspected—their fraud and the defeat device, it continued to deceive its customers through false recalls and false advertising.

24. Beginning in April 2015, Volkswagen issued VW Action Code 2306, which was a recall for CleanDiesel equipped vehicles. Volkswagen claimed that the recall was a “repair” and that it “improved” the engine management system. But many owners recorded a marked decrease in fuel efficiency and performance after the recall was completed.

25. Below is a copy of the Recall Notice sent to CleanDiesel owners in April 2015:



Das Auto.

Volkswagen of America, Inc.  
3800 Hamlin Road  
Auburn Hills, MI 48326

April 2015

JAN HUDSON  
5121 DEL MAR MESA RD  
SAN DIEGO, CA 92130-6812

**This notice applies to your vehicle:** 3VWPL7AJXEM600919

**Subject: Emissions Service Action 2306 – ECM Software  
Certain 2010-2014 Model Year Volkswagen Vehicles Equipped with a 2.0L TDI®  
Clean Diesel Engine**

Dear Volkswagen Owner,

As part of Volkswagen's ongoing commitment to our environment, and in cooperation with the United States Environmental Protection Agency and the California Air Resources Board, we are informing you of our decision to conduct an emissions service action on certain 2010-2014 model year Volkswagen vehicles equipped with a 2.0L TDI® Clean Diesel engine. Our records show that you are the owner of a vehicle affected by this action.

**What is the issue, and what will we do?**

The vehicle's engine management software has been improved to assure your vehicle's tailpipe emissions are optimized and operating efficiently. Under certain operating conditions, the earlier strategy may have increased the chance of the vehicle's MIL light illuminating. If the MIL illuminates for any reason, your vehicle will not pass an IM emissions inspection in some regions.

To address this issue, your authorized Volkswagen dealer will update the ECM software in your vehicle. This work will take about one hour to complete and will be performed for you free of charge. Please keep in mind that your dealer may need additional time for the preparation of the repair, as well as to accommodate their daily workshop schedule.

**IMPORTANT!**

Please note that if the ECM in your vehicle has been "chipped," "tuned," or otherwise modified from original factory specifications with aftermarket components and/or software, work needed to repair, replace, or return the ECM to original factory specifications is **NOT** covered under this action.

**What should you do?**

In order to limit any possible inconvenience, please contact your authorized Volkswagen dealer as soon as possible to schedule this service.

2306/D8 CALI

00004946

26. But after having the recall installed, A3 owners made posts on enthusiast blogs such as the following two posts:

Had my update done couple weeks ago and I've noticed a sizable performance hit afterwards, compared to previous tanks pre-update.

38.00 MPG

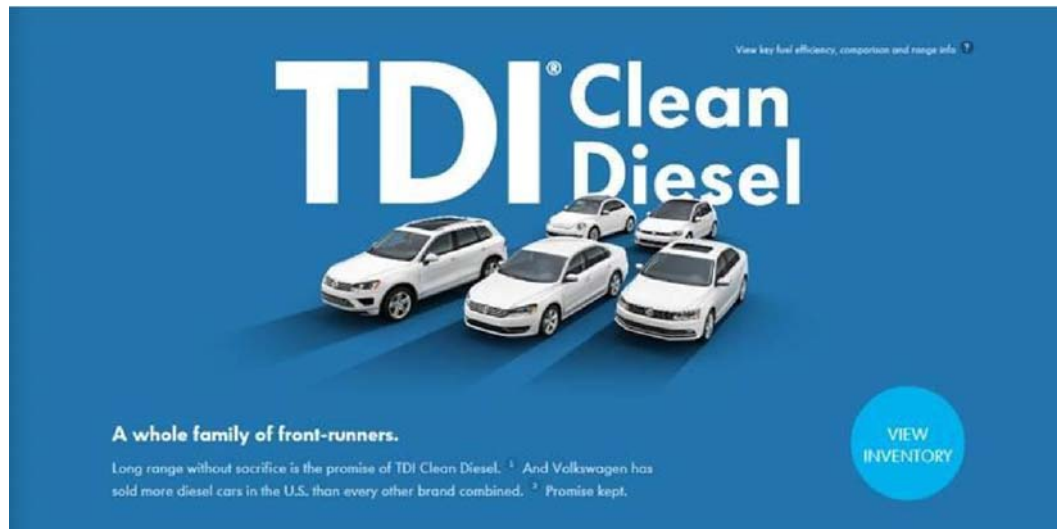
36.42 MPG

37.77 MPG  
 37.51 MPG  
 37.05 MPG  
 /////Recall performed  
 34.13 MPG  
 33.12 MPG

---

edt: real data...  
 bought car in jan in CA (first two is drive back)  
 38.14  
 36.63  
 32.10  
 32.99  
 32.77  
 32.15  
 29.94 (recall done during this tank)  
 26.67  
 25.79  
 26.10

27. Volkswagen continued its aggressive campaign to dupe its customers into believing its cars were clean and environmentally friendly. In advertisements appearing on its webpage as recent as September 21, 2015, Volkswagen extended the deceit. These ads are only now being stripped from Volkswagen's websites.

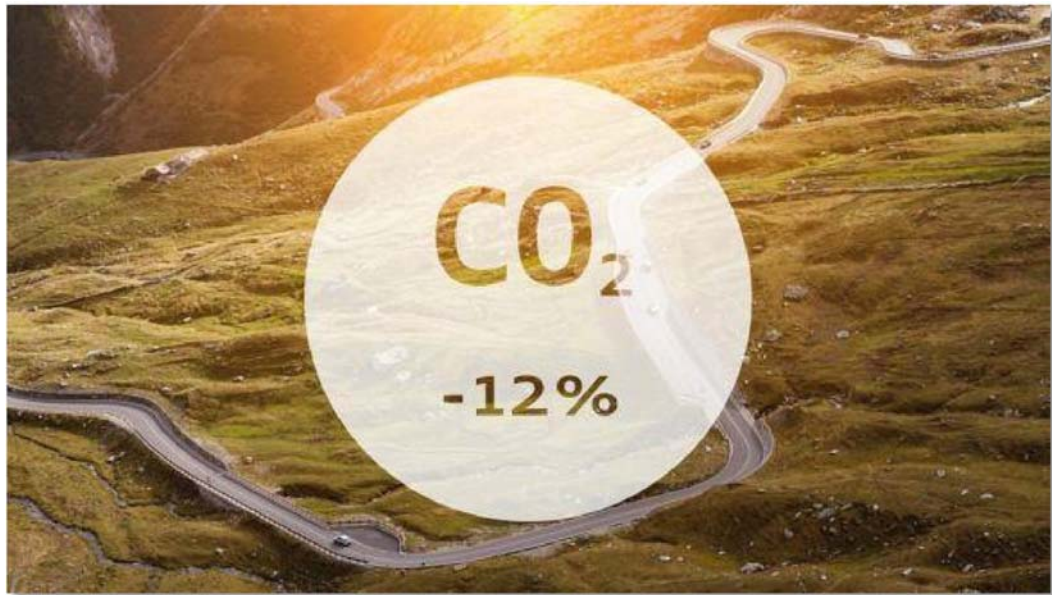


28. Volkswagen's now dubious concern for the environment extended beyond its CleanDiesel campaigns. On the "Environment" page of its website, Volkswagen claims that it takes "environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy

1 focused on reducing fuel consumption and emissions, building the world's cleanest  
2 diesel engines and developing totally new power systems, which utilize new fuel  
3 alternatives."

4 29. Volkswagen trumpeted its apparent environmental *bone fides* when the  
5 Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the  
6 2009 Green Car of the Year. Ironically, a key feature of the most recent CleanDiesel  
7 advertisements was "***Promise kept.***"<sup>6</sup>

8 30. On the Volkswagen CleanDiesel webpage, it continued to mislead  
9 consumers, touting the supposedly reduced greenhouse gas emission of the  
10 CleanDiesel engine system.<sup>7</sup>



21 31. Through its "Think Blue" program, Volkswagen claimed to have a policy  
22 of being "more responsible on the road and more environmentally conscious—not just  
23 in our cars." But whether Volkswagen had any care at all for the environment is now,  
24 at best, debatable.

25  
26 <sup>6</sup> See <http://www.vw.com/features/clean-diesel/> (last visited Sept. 21, 2015). The  
content has since been removed.

27 <sup>7</sup> See  
28 <http://www.audiusa.com/technology/efficiency/tdi?csref=116751439289858719> (last  
visited Sept. 21, 2015). The content has since been removed.



1           32. On its website to promote its “clean” diesel technology,  
2 [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org), Volkswagen falsely claimed that its CleanDiesel engine  
3 system reduces smog and “meets the highest standards in all 50 states, thanks to ultra-  
4 low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

5 **D. Volkswagen’s CleanDiesel Engine Systems Were a Fraud**

6           33. The EPA’s investigation of Volkswagen was prompted by a May 15,  
7 2014, publication titled “In-Use Emissions Testing of Light-Duty Diesel Vehicles in  
8 the United States” by the Center for Alternative Fuels, Engines & Emissions  
9 (“CAFEE”) of West Virginia University (“the CAFEE Report”).

10           34. The International Council of Clean Transportation (“ICCT”) hired  
11 CAFEE to conduct in-use testing of three light-duty diesel vehicles. According to the  
12 CAFEE Report, in the tested vehicles “real-world NO<sub>x</sub> emissions were found to  
13 exceed the US-EPA ... standard by a factor[s] of 5 to 35.”

14           35. Those findings led the EPA to conduct its own further investigation,  
15 which ultimately revealed that, contrary to Volkswagen’s vigorous efforts to promote  
16 itself as a “green” company with an extraordinary commitment to environmental  
17 protection, it was instead a liar and a cheat—its CleanDiesel technology was a fraud  
18 and its cars were gross polluters that were, in fact, not even legal to drive on U.S.  
19 roadways.

20           36. On September 18, 2015, the EPA issued to Volkswagen and its parent  
21 Volkswagen AG and Audi AG a Notice of Violation (“NOV”). The NOV explained  
22 the EPA’s allegations that Volkswagen installed sophisticated software in the  
23 Volkswagen and Audi diesel vehicles sold by Volkswagen in the United States that  
24 detects when the vehicle is undergoing official emissions testing and turns full  
25 emissions controls on only during the test. At all other times that the vehicle is  
26 running, however, the emissions controls are deactivated, meaning that pollution is  
27 freely released into the environment at levels that exceed those allowed by federal and  
28

1 state laws and regulations. The software produced and used by Volkswagen falls under  
2 the legal description of a defeat device, which is prohibited by the Clean Air Act.

3 37. Because modern cars include sophisticated computers and sensors  
4 throughout the car, modern emissions testing uses the car's own sensors and computer  
5 controls to measure the presence of pollutants and track compliance with EPA and  
6 state emissions standards. Emissions testing stations plug a diagnostic device into the  
7 car's on-board diagnostics ("OBD II") port and use the exhaust sensors installed in the  
8 car to measure the substances emitted. Some states, instead of or in addition to an  
9 OBD II diagnostic device, use a probe inserted into the exhaust pipe to measure  
10 emissions.

11 38. Volkswagen's defeat device used software and sophisticated algorithms  
12 to detect when the cars were undergoing emissions testing, and only then engaged  
13 pollution suppression systems to ensure that emissions complied with regulatory  
14 standards. When the car was not being emissions tested—that is, under all other  
15 operating conditions—the electronic engine control systems operated the vehicle with  
16 no regard for regulatory emissions restrictions.

17 39. The result is that Volkswagen's CleanDiesel vehicles would meet  
18 emissions standards in labs or testing stations, but at all other times emit NO<sub>x</sub> at *up to*  
19 *40 times the standard* allowed under United States laws and regulations.

20 40. As the journal *Popular Mechanics* reported, non-Volkswagen diesels  
21 commonly use urea injection to "neutralize" NO<sub>x</sub> emission, but those systems add  
22 weight and complexity to the engine. "Everyone wondered how VW met emissions  
23 standards while foregoing urea injection. As it turns out, they didn't. It wasn't magical  
24 German engineering. Just plain old fraud."

25 41. Remarkably, Volkswagen has done this before. As reported in *USA*  
26 *Today* and the *Los Angeles Times*, Volkswagen was accused of using a defeat device  
27 to pass emissions standards in vehicles it made in 1972-73. While Volkswagen denied  
28

1 wrongdoing, it paid a \$120,000 fine in 1974 in order to settle charges that “it gamed  
2 pollution control systems in four models by changing carburetor settings and shutting  
3 off an emissions-control system at low temperatures.” Volkswagen also agreed to  
4 install corporate controls to prevent a future similar occurrence. Apparently those  
5 controls were not effective.

6 42. On September 20, 2015, Volkswagen admitted that the EPA allegations  
7 were true. It admitted using a defeat device in the Affected Vehicles. Prior to his  
8 resignation as a result of the disclosure of the emissions fraud, Volkswagen’s CEO  
9 Martin Winterkorn stated: “I personally am deeply sorry that we have broken the trust  
10 of our customers and the public.”

11 43. Michael Horn, President and CEO of Volkswagen Group of America,  
12 reportedly admitted on September 21, 2015:

13 As you have seen since Friday, the EPA, the Environmental  
14 Protection Agency, has issued a statement and reality that  
15 Volkswagen Group manipulated engine software in our TDI  
16 diesel cars, and we violated emissions standards. The CEO  
17 of our parent company, Dr. Martin Winterkorn, said  
18 yesterday Volkswagen will fully cooperate with the  
19 responsible agencies, and much much more important as I  
20 see it, he stated that he was personally and deeply sorry for  
21 this—that Volkswagen has broken the trust of our customers,  
22 and the public here in America. And lastly he stated that this  
23 matter, and this is I think common sense, now this is the first  
24 priority for him personally and for the entire [board]. So let’s  
25 be clear about this: our company was dishonest with the  
26 EPA and the California Air Resources Board, and with all of  
27 you. And in my German words, we’ve totally screwed up.  
28 We must fix those cars, and prevent this from ever  
happening again, and we have to make things right—with  
the government, the public, our customers, our employees,  
and also very importantly our dealers. This kind of behavior,  
I can tell you out of my heart, is completely inconsistent  
with our core values. The three core values of our brand are  
value, innovation, and in this context very importantly,  
responsibility: for our employees, for our stakeholders, and  
for the environment. So it goes totally against what we  
believe is right. Along with our German headquarters, we are  
committed to do what must be done, and to begin to restore  
your trust.



1           44. In what will perhaps prove to be the automotive understatement of the  
2 decade, Mr. Horn said Volkswagen “screwed up.”

3           45. By manufacturing and selling cars with “defeat devices” that allowed for  
4 higher levels of emissions than were certified to the EPA, Volkswagen violated the  
5 Clean Air Act, defrauded its customers, placed in commerce vehicles that were illegal  
6 to drive on U.S. roadways, and engaged in unfair competition and false advertising  
7 under state and federal laws.

8           46. Moreover, Volkswagen’s fraud harmed not just the customers it duped  
9 into buying its heavily polluting—not so—CleanDiesels, but it harmed the  
10 environment. Through six years of fraud, Volkswagen put on the United States  
11 roadways over 483,000 cars that spewed up to 40 times the permitted level of NOx  
12 and other pollutants. These emissions invariably have harmed the air quality and  
13 environment and, as a result, harmed the United States and its citizens.

#### 14 **E. Volkswagen Profited From its Fraud**

15           47. Volkswagen has charged a substantial premium for the Affected  
16 Vehicles, ironically marketed by Volkswagen as “CleanDiesel.” For example, for the  
17 2015 Volkswagen Jetta, the base S model has a starting MSRP of \$18,780. The base  
18 TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price premium of  
19 \$2,860. The CleanDiesel premium for the highest trim Jetta model is substantially  
20 higher. The highest level gas Jetta SE has a starting MSRP of \$20,095, while the  
21 CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

22           48. These premiums occur across all of the vehicles lines in which  
23 Volkswagen installed its defeat device for emissions testing. The table below sets  
24 forth the price premium in 2015 for each base, mid-level and top-line trim for each  
25 affected model. Similar premiums existed for each Affected Vehicle for every model  
26 year:  
27  
28

**2015 CleanDiesel Price Premiums**

<b>Model</b>	<b>Base</b>	<b>Mid-level</b>	<b>Top-line</b>
<i>VW Jetta</i>	\$2,860	\$4,300	\$6,315
<i>VW Beetle</i>	\$4,635	n/a	\$2,640
<i>VW Golf</i>	\$2,950	\$1,000	\$1,000
<i>VW Passat</i>	\$5,755	\$4,750	\$6,855
<i>Audi A3</i>	\$2,805	\$3,095	\$2,925

**F. Volkswagen's False Advertising and Fraud Has Profoundly Harmed Owners of Affected Vehicles**

49. As set forth above, Class members paid large premiums to purchase Affected Vehicles. They paid these premiums as a result of Volkswagen's false claims that the CleanDiesel engine system was environmentally friendly, clean, efficient and EPA complaint. Class members were harmed because from the day they drove their Affected Vehicle off the lot, they did not get what they paid for.

50. In addition, as a direct result of the disclosure of Volkswagen's CleanDiesel fraud, Affected Vehicles have sharply decreased in value and are presently unsalable. In fact, Volkswagen has halted all sales of Affected Vehicles, new or used, so that even its dealers are stuck with Affected Vehicles that they cannot sell. Each Class member therefore suffered a direct pecuniary loss in the form of the decreased value of their Affected Vehicle.

51. The loss in value is particularly acute and affects Class members because they do not want to own cars that pollute and harm the environment. Cleanliness was the core of Volkswagen's marketing efforts and a driving factor in purchase decisions. Class members want to sell their Affected Vehicles but they cannot without incurring substantial losses.

1           52. Moreover, many Class members purchased their vehicles with financing  
2 in the form of car loans or leases. The drop in value of Affected Vehicles has caused  
3 the financing to be underwater, meaning that Class members will have to pay money,  
4 over and above whatever they can sell their car for, in order to get into a car that is  
5 actually legal to drive on United States roadways.

6           53. Volkswagen has been ordered by the EPA to recall the Affected Vehicles  
7 and repair them so that they comply with EPA emissions requirements at all times  
8 during normal operation. However, Volkswagen will not be able to make the Affected  
9 Vehicles comply with emissions standards without substantially degrading their  
10 performance characteristics, including their horsepower and their efficiency. As a  
11 result, even if Volkswagen is able to make the Affected Vehicles EPA compliant,  
12 Class members will nonetheless suffer actual harm and damages because their vehicles  
13 will no longer perform as they did when purchased and as advertised. This will  
14 necessarily result in a diminution in value of every Affected Vehicle and it will cause  
15 owners of Affected Vehicles to pay more for fuel while using their affected vehicles.

16           54. The harm described immediately above is not at all speculative. In April  
17 2015, Volkswagen issued a recall for one line of Affected Vehicles, the Audi A3  
18 diesel. Volkswagen claimed this was a “repair” that “improved” engine management  
19 software. But scores of Class members reported that immediately after having the  
20 recall repair performed, their vehicle performance and fuel efficiency precipitously  
21 dropped 10-20%. These owners have already suffered harm to the value of their cars  
22 and have been harmed from having to pay additional sums for fuel.

23           55. In addition, many Class members purchased very expensive extended  
24 warranties for their Affected Vehicles, intending to own the vehicles for many years  
25 beyond the initial warranty. However, as a result of Volkswagen’s fraud, Class  
26 members no longer want to own the Affected Vehicles and when they sell them, in  
27  
28

1 addition to losses from the cars being worth much less as a result of Volkswagen's  
2 fraud, they will lose the value of the extended warranties that they purchased.

3 56. Further compounding the harm to Class members is that as of the date of  
4 this filing, Volkswagen has provided no guidance directly to customers or to its dealer  
5 network. Concerned owners of Affected Vehicles have been told absolutely nothing  
6 about what will happen to their cars, whether they are legal to drive in their states,  
7 what Volkswagen intends to do, or what owners should do. Instead, calls to dealers  
8 and Volkswagen itself either go unanswered, or are answered with "we don't know."

9 57. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business  
10 practices, and its failure to disclose that under normal operating conditions the  
11 Affected Vehicles emit up to 40 times the allowed levels, owners and/or lessees of the  
12 Affected Vehicles have suffered losses in money and/or property. Had Plaintiffs and  
13 Class members known of the defeat device at the time they purchased or leased their  
14 Affected Vehicles, they would not have purchased or leased those vehicles, or would  
15 have paid substantially less for the vehicles than they did. Moreover, when and if  
16 Volkswagen recalls Affected Vehicles, in addition to its prior recall of the Audi A3,  
17 and degrades the CleanDiesel engine performance in order to make the Affected  
18 Vehicles compliant with EPA standards, all Plaintiffs and Class members will be  
19 required to pay extra for fuel and will not obtain the performance characteristics of  
20 their vehicles when purchased. Affected Vehicles will necessarily be worth less in the  
21 marketplace because of the decrease in performance and efficiency.

22 58. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business  
23 practices, and its failure to disclose that under normal operating conditions the  
24 Affected Vehicles emit up to 40 times the allowed levels of pollutants, the  
25 environment and air quality in the United States has been harmed. If the EPA and  
26 other regulators had known of the true nature of the CleanDiesel engine system and  
27 the true levels of pollutants it emitted, it would not have certified it for use on the  
28

1 United States roadways and the air quality and environment in the United States would  
2 not have been harmed.

### 3 **III. JURISDICTION**

4 59. This Court has jurisdiction pursuant to the Class Action Fairness Act of  
5 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more  
6 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and  
7 interest; and minimal diversity exists. This Court also has supplemental jurisdiction  
8 over the state law claims pursuant to 28 U.S.C. § 1367.

### 9 **IV. VENUE**

10 60. Venue is proper in this District under 28 U.S.C. § 1391 because a  
11 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in  
12 this District. Plaintiffs Sias and Hill are domiciled in this District and purchased their  
13 Affected Vehicles in this District. Volkswagen has its Test Center California located  
14 in this District "with a primary focus on powertrain and systems development,  
15 government compliance, and field quality testing."<sup>8</sup> Volkswagen has marketed,  
16 advertised, sold, and leased the Affected Vehicles within this District.

### 17 **V. PARTIES**

#### 18 **A. California Plaintiffs**

##### 19 **1. Jess Hill**

20 61. Plaintiff Jess Hill is an individual domiciled in Los Angeles, California.  
21 In January, 2012, Plaintiff purchased a new 2012 VW Golf TDI 4D CleanDiesel from  
22 Volkswagen of Downtown LA, an authorized Volkswagen dealer in Los Angeles,  
23 California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at  
24 the time the vehicle was purchased, the vehicle was equipped with an emissions  
25

---

26  
27 <sup>8</sup> See  
28 [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/themes/2012/08/Test\\_Center\\_California.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/themes/2012/08/Test_Center_California.html)

1 control defeat device which caused the vehicle to get an undue EPA certification and  
2 pass emissions tests, but at all other times emit up to 40 times the allowed level of  
3 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
4 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
5 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
6 purposefully used the defeat device, but did not disclose the defeat device and its  
7 effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken,  
8 belief that the vehicle complied with United States emissions standards, was properly  
9 EPA certified, and would retain all of its operating characteristics throughout its useful  
10 life.

11 **2. Kevin Jentes**

12 62. Plaintiff Kevin Jentes is an individual domiciled in Ben Lomond,  
13 California. In December, 2014, Plaintiff purchased a used 2014 VW Passat TDI SE  
14 Sedan 4D CleanDiesel from Santa Cruz Volkswagen the SuperStore, an authorized  
15 Volkswagen dealer in Santa Cruz, California. Plaintiff purchased, and still owns, this  
16 vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was  
17 equipped with an emissions control defeat device which caused the vehicle to get an  
18 undue EPA certification and pass emissions tests, but at all other times emit up to 40  
19 times the allowed level of pollutants, including NOx. The use of the defeat device by  
20 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
21 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
22 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
23 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
24 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
25 standards, was properly EPA certified, and would retain all of its operating  
26 characteristics throughout its useful life.  
27  
28

1                   **3.     Malia Sias**

2                   63.     Plaintiff Malia Sias is an individual domiciled in Los Angeles, California.  
3     In April, 2011, Plaintiff purchased a new 2011 VW Golf TDI CleanDiesel from  
4     Commonwealth Volkswagen, an authorized Volkswagen dealer in Santa Ana,  
5     California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at  
6     the time the vehicle was purchased, the vehicle was equipped with an emissions  
7     control defeat device which caused the vehicle to get an undue EPA certification and  
8     pass emissions tests, but at all other times emit up to 40 times the allowed level of  
9     pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
10    Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
11    of warranty value, and diminished value of the vehicle. Volkswagen knew about and  
12    purposefully used the defeat device, but did not disclose the defeat device and its  
13    effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken,  
14    belief that his vehicle complied with United States emissions standards, was properly  
15    EPA certified, and would retain all of its operating characteristics throughout its useful  
16    life.

17                  **B.     Alabama Plaintiffs**

18                   **1.     Arthur Scharein**

19                  64.     Plaintiff Arthur Scharein is an individual domiciled in Decatur, Alabama.  
20    In November, 2014, Plaintiff purchased a new 2014 VW Beetle Convertible TDI  
21    Premium CleanDiesel from Hiley Volkswagen of Huntsville, an authorized  
22    Volkswagen dealer in Huntsville, Alabama. Plaintiff purchased, and still owns, this  
23    vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was  
24    equipped with an emissions control defeat device which caused the vehicle to get an  
25    undue EPA certification and pass emissions tests, but at all other times emit up to 40  
26    times the allowed level of pollutants, including NOx. The use of the defeat device by  
27    Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
28



1 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
2 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
3 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
4 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
5 standards, was properly EPA certified, and would retain all of its operating  
6 characteristics throughout its useful life.

7 **C. Alaska Plaintiffs**

8 **1. Michael Bozine**

9 65. Plaintiff Michael Bozine is an individual domiciled in Eagle River,  
10 Alaska. In February, 2015, Plaintiff purchased a new 2015 VW Jetta TDI CleanDiesel  
11 from Kendall Volkswagen of Anchorage, an authorized Volkswagen dealer in  
12 Anchorage, Alaska. Plaintiff purchased, and still owns, this vehicle. Unknown to  
13 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
14 emissions control defeat device which caused the vehicle to get an undue EPA  
15 certification and pass emissions tests, but at all other times emit up to 40 times the  
16 allowed level of pollutants, including NOx. The use of the defeat device by  
17 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
18 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
19 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
20 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
21 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
22 standards, was properly EPA certified, and would retain all of its operating  
23 characteristics throughout its useful life.

24 **D. Arizona Plaintiffs**

25 **1. Clifford Broussard**

26 66. Plaintiff Clifford Broussard is an individual domiciled in Mesa, Arizona.  
27 In August, 2013, Plaintiff purchased a new 2013 VW Jetta TDI CleanDiesel from Bob  
28



1 Baker Volkswagen, an authorized Volkswagen dealer in Carlsbad, California.  
2 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
3 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
4 device which caused the vehicle to get an undue EPA certification and pass emissions  
5 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
6 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
7 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
8 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
9 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
10 so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
11 vehicle complied with United States emissions standards, was properly EPA certified,  
12 and would retain all of its operating characteristics throughout its useful life.

13 **E. Arkansas Plaintiffs**

14 **1. Victoria McClelland**

15 67. Plaintiff Victoria McClelland is an individual domiciled in Bentonville,  
16 Arkansas. In July, 2009, Plaintiff purchased a new 2009 VW Jetta TDI CleanDiesel  
17 from Northwest Arkansas VW (now Crain Volkswagen), an authorized Volkswagen  
18 dealer in Rogers, Arkansas. Plaintiff purchased, and still owns this vehicle. Unknown  
19 to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
20 emissions control defeat device which caused the vehicle to get an undue EPA  
21 certification and pass emissions tests, but at all other times emit up to 40 times the  
22 allowed level of pollutants, including NOx. The use of the defeat device by  
23 Volkswagen has caused. Volkswagen knew about and purposefully used the defeat  
24 device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff  
25 purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied  
26 with United States emissions standards, was properly EPA certified, and would retain  
27 all of its operating characteristics throughout its useful life.  
28

1 **F. Colorado Plaintiffs**

2 **1. Jeremiah Holden**

3 68. Plaintiff Jeremiah Holden is an individual domiciled in Denver,  
4 Colorado. In December, 2014, Plaintiff purchased a new 2014 VW Jetta Sportwagen  
5 TDI CleanDiesel from Emich Volkswagen, an authorized Volkswagen dealer in  
6 Denver, Colorado. Plaintiff purchased, and still owns, this vehicle. Unknown to  
7 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
8 emissions control defeat device which caused the vehicle to get an undue EPA  
9 certification and pass emissions tests, but at all other times emit up to 40 times the  
10 allowed level of pollutants, including NOx. The use of the defeat device by  
11 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
12 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
13 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
14 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
15 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
16 standards, was properly EPA certified, and would retain all of its operating  
17 characteristics throughout its useful life.

18 **2. Hildegard Reiser, M.D.**

19 69. Plaintiff Hildegard Reiser, M.D. is an individual domiciled in Loveland,  
20 Colorado. In August, 2015, Plaintiff purchased a new VW Golf TDI SE CleanDiesel  
21 from Ed Carroll Motor Company, an authorized Volkswagen dealer in Fort Collins,  
22 Colorado. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at  
23 the time the vehicle was purchased, the vehicle was equipped with an emissions  
24 control defeat device which caused the vehicle to get an undue EPA certification and  
25 pass emissions tests, but at all other times emit up to 40 times the allowed level of  
26 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
27 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
28

1 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
2 purposefully used the defeat device, but did not disclose the defeat device and its  
3 effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken,  
4 belief that her vehicle complied with United States emissions standards, was properly  
5 EPA certified, and would retain all of its operating characteristics throughout its useful  
6 life.

7 **G. Connecticut Plaintiffs**

8 **1. Spencer Moore**

9 70. Plaintiff Spencer Moore is an individual domiciled in Windsor,  
10 Connecticut. In September, 2010, Plaintiff purchased a new 2010 VW Jetta TDI  
11 CleanDiesel from Lia Volkswagen, an authorized Volkswagen dealer in Enfield,  
12 Connecticut. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at  
13 the time the vehicle was purchased, the vehicle was equipped with an emissions  
14 control defeat device which caused the vehicle to get an undue EPA certification and  
15 pass emissions tests, but at all other times emit up to 40 times the allowed level of  
16 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
17 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
18 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
19 purposefully used the defeat device, but did not disclose the defeat device and its  
20 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken,  
21 belief that his vehicle complied with United States emissions standards, was properly  
22 EPA certified, and would retain all of its operating characteristics throughout its useful  
23 life.

24 **H. Delaware Plaintiffs**

25 **1. John Gauger**

26 71. Plaintiff John Gauger is an individual domiciled in Odessa, Delaware. In  
27 November, 2012, Plaintiff purchased a new 2013 Jetta Sportswagen TDI CleanDiesel  
28

1 from Smith Volkswagen, an authorized Volkswagen dealer in Wilmington, Delaware.  
 2 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
 3 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
 4 device which caused the vehicle to get an undue EPA certification and pass emissions  
 5 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
 6 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
 7 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
 8 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
 9 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
 10 so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
 11 vehicle complied with United States emissions standards, was properly EPA certified,  
 12 and would retain all of its operating characteristics throughout its useful life.

### 13 **I. District of Columbia Plaintiffs**

#### 14 **1. Hanaa Rifaey**

15 72. Plaintiff Hanaa Rifaey is an individual domiciled in Washington, DC. In  
 16 April, 2010, Plaintiff purchased a new 2010 VW Jetta Sportwagen TDI CleanDiesel  
 17 from Wes Greenway's Alexandria Volkswagen, an authorized Volkswagen dealer in  
 18 Alexandria, Virginia. Plaintiff purchased, and still owns, this vehicle. Unknown to  
 19 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
 20 emissions control defeat device which caused the vehicle to get an undue EPA  
 21 certification and pass emissions tests, but at all other times emit up to 40 times the  
 22 allowed level of pollutants, including NOx. The use of the defeat device by  
 23 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
 24 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
 25 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
 26 the defeat device and its effects to Plaintiff, so Plaintiff purchased her vehicle on the  
 27 reasonable, but mistaken, belief that her vehicle complied with United States  
 28

1 emissions standards, was properly EPA certified, and would retain all of its operating  
2 characteristics throughout its useful life.

3 **J. Florida Plaintiffs**

4 **1. Deborah Markward**

5 73. Plaintiff Deborah Markward is an individual domiciled in Orlando,  
6 Florida. In March, 2010, Plaintiff purchased a new 2010 VW Jetta TDI CleanDiesel  
7 from Aristocrat Volkswagen, an authorized Volkswagen dealer in Sanford, Florida.  
8 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
9 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
10 device which caused the vehicle to get an undue EPA certification and pass emissions  
11 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
12 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
13 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
14 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
15 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
16 so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her  
17 vehicle complied with United States emissions standards, was properly EPA certified,  
18 and would retain all of its operating characteristics throughout its useful life.

19 **K. Georgia Plaintiffs**

20 **1. John Brown**

21 74. Plaintiff John Brown is an individual domiciled in Macon, Georgia. In  
22 April, 2012, Plaintiff purchased a used 2011 VW Jetta TDI CleanDiesel from  
23 Volkswagen of Macon, an authorized Volkswagen dealer in Macon, Georgia. In  
24 August, 2014, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from  
25 Volkswagen of Macon, an authorized Volkswagen dealer in Macon, Georgia. Plaintiff  
26 purchased, and still owns, these vehicles. Unknown to Plaintiff at the time the  
27 vehicles were purchased, the vehicles were equipped with an emissions control defeat  
28

1 device which caused the vehicles to get an undue EPA certification and pass emissions  
2 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
3 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
4 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
5 value, and diminished value of his vehicles. Volkswagen knew about and  
6 purposefully used the defeat device, but did not disclose the defeat device and its  
7 effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken,  
8 belief that his vehicles complied with United States emissions standards, was properly  
9 EPA certified, and would retain all of its operating characteristics throughout their  
10 useful life.

11 **L. Hawaii Plaintiffs**

12 **1. Christina Paolicchi**

13 75. Plaintiff Christina Paolicchi is an individual domiciled in Katy, Texas. In  
14 August, 2011, Plaintiff purchased a new 2011 VW Jetta TDI CleanDiesel from Tony  
15 Automotive Group dba Tony Volkswagen #207508, an authorized Volkswagen dealer  
16 in Waipahu, Hawaii. Plaintiff purchased, and still owns, this vehicle. Unknown to  
17 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
18 emissions control defeat device which caused the vehicle to get an undue EPA  
19 certification and pass emissions tests, but at all other times emit up to 40 times the  
20 allowed level of pollutants, including NOx. The use of the defeat device by  
21 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
22 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
23 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
24 the defeat device and its effects to Plaintiff, so Plaintiff purchased her vehicle on the  
25 reasonable, but mistaken, belief that her vehicle complied with United States  
26 emissions standards, was properly EPA certified, and would retain all of its operating  
27 characteristics throughout its useful life.  
28

1       **M.     Idaho Plaintiffs**

2               **1.     Adam Frugoli**

3               76.     Plaintiff Adam Frugoli is an individual domiciled in Idaho Falls, Idaho.  
4     In April 2015, Plaintiff purchased a new 2015 VW Passat TDI CleanDiesel from  
5     Teton Volkswagen an authorized Volkswagen dealer in Idaho Falls, Idaho. Plaintiff  
6     purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle  
7     was purchased, the vehicle was equipped with an emissions control defeat device  
8     which caused the vehicle to get an undue EPA certification and pass emissions tests,  
9     but at all other times emit up to 40 times the allowed level of pollutants, including  
10    NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
11    loss, future attempted repairs, future additional fuel costs, loss of warranty value, and  
12    diminished value of his vehicle. Volkswagen knew about and purposefully used the  
13    defeat device, but did not disclose the defeat device and its effects to Plaintiff, so  
14    Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle  
15    complied with United States emissions standards, was properly EPA certified, and  
16    would retain all of its operating characteristics throughout its useful life.

17       **N.     Illinois Plaintiffs**

18               **1.     Tracey Rosen**

19               77.     Plaintiff Tracey Rosen is an individual domiciled in Chicago, Illinois. In  
20    August, 2012, Plaintiff purchased a new 2012 VW Golf TDI CleanDiesel from  
21    Autobarn of Evanston, an authorized Volkswagen dealer in Evanston, Illinois.  
22    Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
23    vehicle was purchased, the vehicle was equipped with an emissions control defeat  
24    device which caused the vehicle to get an undue EPA certification and pass emissions  
25    tests, but at all other times emit up to 40 times the allowed level of pollutants,  
26    including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
27    of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
28



1 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
2 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
3 so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her  
4 vehicle complied with United States emissions standards, was properly EPA certified,  
5 and would retain all of its operating characteristics throughout its useful life.

6 **O. Indiana Plaintiffs**

7 **1. Jeffrey Brady**

8 78. Plaintiff Jeffrey Brady is an individual domiciled in Jeffersonville,  
9 Indiana. In June, 2014, Plaintiff purchased a new 2014 VW Passat TDI SE  
10 CleanDiesel from Sam Swope Volkswagen of Clarksville, an authorized Volkswagen  
11 dealer in Clarksville, Indiana. Plaintiff purchased, and still owns, this vehicle.  
12 Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped  
13 with an emissions control defeat device which caused the vehicle to get an undue EPA  
14 certification and pass emissions tests, but at all other times emit up to 40 times the  
15 allowed level of pollutants, including NOx. The use of the defeat device by  
16 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
17 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
18 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
19 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
20 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
21 standards, was properly EPA certified, and would retain all of its operating  
22 characteristics throughout its useful life.

23 **P. Iowa Plaintiffs**

24 **1. Boualivanh Phanphongsane**

25 79. Plaintiff Boualivanh Phanphongsane is an individual domiciled in  
26 Ottumwa, Iowa. In August, 2014, Plaintiff purchased a new 2015 VW Golf TDI  
27 CleanDiesel from Carousel Motors Volkswagen, an authorized Volkswagen dealer in  
28



1 Iowa City, Iowa. Plaintiff purchased, and still owns, this vehicle. Unknown to  
2 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
3 emissions control defeat device which caused the vehicle to get an undue EPA  
4 certification and pass emissions tests, but at all other times emit up to 40 times the  
5 allowed level of pollutants, including NOx. The use of the defeat device by  
6 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
7 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
8 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
9 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
10 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
11 standards, was properly EPA certified, and would retain all of its operating  
12 characteristics throughout its useful life.

13 **Q. Kansas Plaintiffs**

14 **1. Brenda Penney**

15 80. Plaintiff Brenda Penney is an individual domiciled in Wichita, Kansas.  
16 In June, 2015, Plaintiff purchased a new 2015 VW Golf Sportwagen TDI CleanDiesel  
17 from Northtowne Auto and completed her transaction in Witchita, Kansas. Plaintiff  
18 purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle  
19 was purchased, the vehicle was equipped with an emissions control defeat device  
20 which caused the vehicle to get an undue EPA certification and pass emissions tests,  
21 but at all other times emit up to 40 times the allowed level of pollutants, including  
22 NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
23 loss, future attempted repairs, future additional fuel costs, loss of warranty value, and  
24 diminished value of his vehicle. Volkswagen knew about and purposefully used the  
25 defeat device, but did not disclose the defeat device and its effects to Plaintiff, so  
26 Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle  
27  
28

1 complied with United States emissions standards, was properly EPA certified, and  
2 would retain all of its operating characteristics throughout its useful life.

3 **R. Kentucky Plaintiffs**

4 **1. Michael Antis**

5 81. Plaintiff Michael Antis is an individual domiciled in Louisville,  
6 Kentucky. In June, 2015, Plaintiff purchased a new 2015 VW Jetta SEL TDI  
7 CleanDiesel from Bachman Volkswagen, an authorized Volkswagen dealer in  
8 Louisville, Kentucky. Plaintiff purchased, and still owns, this vehicle. Unknown to  
9 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
10 emissions control defeat device which caused the vehicle to get an undue EPA  
11 certification and pass emissions tests, but at all other times emit up to 40 times the  
12 allowed level of pollutants, including NOx. The use of the defeat device by  
13 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
14 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
15 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
16 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
17 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
18 standards, was properly EPA certified, and would retain all of its operating  
19 characteristics throughout its useful life.

20 **S. Louisiana Plaintiffs**

21 **1. Alex Arceneaux**

22 82. Plaintiff Alex Arceneaux is an individual domiciled in Geismar,  
23 Louisiana. In July, 2015, Plaintiff purchased a new 2015 VW Passat TDI CleanDiesel  
24 from Southpoint Volkswagen, an authorized Volkswagen dealer in Baton Rouge,  
25 Louisiana. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at  
26 the time the vehicle was purchased, the vehicle was equipped with an emissions  
27 control defeat device which caused the vehicle to get an undue EPA certification and  
28

1 pass emissions tests, but at all other times emit up to 40 times the allowed level of  
2 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
3 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
4 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
5 purposefully used the defeat device, but did not disclose the defeat device and its  
6 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken,  
7 belief that his vehicle complied with United States emissions standards, was properly  
8 EPA certified, and would retain all of its operating characteristics throughout its useful  
9 life.

10 **T. Maine Plaintiffs**

11 **1. G. Keating Pepper**

12 83. Plaintiff G. Keating Pepper is an individual domiciled in Northeast  
13 Harbor, Maine. In March, 2015, Plaintiff purchased a new 2015 VW Passat TDI  
14 CleanDiesel from Darlings Volkswagen, an authorized Volkswagen dealer in Bangor,  
15 Maine. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the  
16 time the vehicle was purchased, the vehicle was equipped with an emissions control  
17 defeat device which caused the vehicle to get an undue EPA certification and pass  
18 emissions tests, but at all other times emit up to 40 times the allowed level of  
19 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
20 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
21 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
22 purposefully used the defeat device, but did not disclose the defeat device and its  
23 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken,  
24 belief that his vehicle complied with United States emissions standards, was properly  
25 EPA certified, and would retain all of its operating characteristics throughout its useful  
26 life.

1       **U.     Maryland Plaintiffs**

2               **1.     Devan Wang**

3               84.     Plaintiff Devan Wang is an individual domiciled in Ellicott City,  
4     Maryland. In January, 2014, Plaintiff purchased a new 2013 VW Golf TDI  
5     CleanDiesel from Russel Volkswagen, an authorized Volkswagen dealer in Baltimore,  
6     Maryland. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at  
7     the time the vehicle was purchased, the vehicle was equipped with an emissions  
8     control defeat device which caused the vehicle to get an undue EPA certification and  
9     pass emissions tests, but at all other times emit up to 40 times the allowed level of  
10    pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
11    Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
12    of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
13    purposefully used the defeat device, but did not disclose the defeat device and its  
14    effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken,  
15    belief that his vehicle complied with United States emissions standards, was properly  
16    EPA certified, and would retain all of its operating characteristics throughout its useful  
17    life.

18       **V.     Massachusetts Plaintiffs**

19               **1.     Robert Hooker**

20               85.     Plaintiff Robert Hooker is an individual domiciled in Newburyport,  
21    Massachusetts. In October, 2014, Plaintiff purchased a new 2015 Audi A3 TDI  
22    CleanDiesel from Audi Natick, an authorized Audi dealer in Natick, Massachusetts.  
23    Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
24    vehicle was purchased, the vehicle was equipped with an emissions control defeat  
25    device which caused the vehicle to get an undue EPA certification and pass emissions  
26    tests, but at all other times emit up to 40 times the allowed level of pollutants,  
27    including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
28

1 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
2 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
3 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
4 so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
5 vehicle complied with United States emissions standards, was properly EPA certified,  
6 and would retain all of its operating characteristics throughout its useful life.

7 **W. Michigan Plaintiffs**

8 **1. Matthew Olovson**

9 86. Plaintiff Matthew Olovson is an individual domiciled in Grand Rapids,  
10 Michigan. In September, 2012, Plaintiff purchased a new 2013 Audi A3  
11 TDICleanDiesel from Delta Imports, an authorized Volkswagen dealer in Grand  
12 Rapids, Michigan. Plaintiff purchased, and still owns, this vehicle. Unknown to  
13 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
14 emissions control defeat device which caused the vehicle to get an undue EPA  
15 certification and pass emissions tests, but at all other times emit up to 40 times the  
16 allowed level of pollutants, including NOx. The use of the defeat device by  
17 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
18 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
19 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
20 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
21 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
22 standards, was properly EPA certified, and would retain all of its operating  
23 characteristics throughout its useful life.

24 **X. Minnesota Plaintiffs**

25 **1. William Mackey**

26 87. Plaintiff William Mackey is an individual domiciled in Saint Louis,  
27 Missouri. In December, 2010, Plaintiff purchased a new 2011 VW Golf TDI  
28

1 CleanDiesel from Schmelz Countryside Volkswagen, an authorized Volkswagen  
2 dealer in Saint Paul, Minnesota. Plaintiff purchased, and still owns, this vehicle.  
3 Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped  
4 with an emissions control defeat device which caused the vehicle to get an undue EPA  
5 certification and pass emissions tests, but at all other times emit up to 40 times the  
6 allowed level of pollutants, including NOx. The use of the defeat device by  
7 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
8 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
9 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
10 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
11 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
12 standards, was properly EPA certified, and would retain all of its operating  
13 characteristics throughout its useful life.

14 **Y. Mississippi Plaintiffs**

15 **1. Edward Simmons**

16 88. Plaintiff Edward Simmons is an individual domiciled in Ridgeland,  
17 Mississippi. In February, 2011, Plaintiff purchased a used 2009 VW Jetta TDI  
18 CleanDiesel from Gorman McCracken Volkswagen, an authorized Volkswagen dealer  
19 in Longview, Texas. Plaintiff purchased, and still owns, this vehicle. Unknown to  
20 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
21 emissions control defeat device which caused the vehicle to get an undue EPA  
22 certification and pass emissions tests, but at all other times emit up to 40 times the  
23 allowed level of pollutants, including NOx. The use of the defeat device by  
24 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
25 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
26 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
27 the defeat device and its effects to Plaintiff, so Plaintiff purchased her vehicle on the  
28

1 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
2 standards, was properly EPA certified, and would retain all of its operating  
3 characteristics throughout its useful life.

4 **Z. Missouri Plaintiffs**

5 **1. Charles Hall**

6 89. Plaintiff Charles Hall is an individual domiciled in Saint Louis Missouri.  
7 In July, 2009, Plaintiff purchased a new 2009 VW Jetta TDI CleanDiesel from Dean  
8 Team Volkswagen of Kirkwood, an authorized Volkswagen dealer in Kirkwood,  
9 Missouri. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the  
10 time the vehicle was purchased, the vehicle was equipped with an emissions control  
11 defeat device which caused the vehicle to get an undue EPA certification and pass  
12 emissions tests, but at all other times emit up to 40 times the allowed level of  
13 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
14 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
15 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
16 purposefully used the defeat device, but did not disclose the defeat device and its  
17 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken,  
18 belief that his vehicle complied with United States emissions standards, was properly  
19 EPA certified, and would retain all of its operating characteristics throughout its useful  
20 life.

21 **AA. Montana Plaintiffs**

22 **1. Kotab Holdings LLC**

23 90. Plaintiff Kotab Holdings LLC is a limited liability company organized  
24 under the laws of the State of Montana with its principal office address in Whitefish,  
25 Montana. In April, 2015, Plaintiff purchased a used 2011 Audi A3 TDI from Sweet  
26 Rides, LLC, a used car dealer in Greer, South Carolina. Plaintiff purchased, and still  
27 owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the  
28



1 vehicle was equipped with an emissions control defeat device which caused the  
2 vehicle to get an undue EPA certification and pass emissions tests, but at all other  
3 times emit up to 40 times the allowed level of pollutants, including NOx. The use of  
4 the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future  
5 attempted repairs, future additional fuel costs, loss of warranty value, and diminished  
6 value of his vehicle. Volkswagen knew about and purposefully used the defeat device,  
7 but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased  
8 the vehicle on the reasonable, but mistaken, belief that the vehicle complied with  
9 United States emissions standards, was properly EPA certified, and would retain all of  
10 its operating characteristics throughout its useful life.

11 **BB. Nebraska Plaintiffs**

12 **1. Alan Branting**

13 91. Plaintiff Alan Branting is an individual domiciled in Lincoln, Nebraska.  
14 In September, 2010, Plaintiff purchased a new 2010 VW Jetta TDI Cup Edition  
15 CleanDiesel from Schworer Volkswagen, an authorized Volkswagen dealer in  
16 Lincoln, Nebraska. In April, 2015, Plaintiff purchased a new 2015 VW Passat TDI  
17 CleanDiesel from Performance Volkswagen, an authorized Volkswagen dealer in La  
18 Vista, Nebraska. Plaintiff purchased, and still owns, these vehicles. Unknown to  
19 Plaintiff at the time the vehicles were purchased, the vehicles were equipped with an  
20 emissions control defeat device which caused the vehicles to get an undue EPA  
21 certification and pass emissions tests, but at all other times emit up to 40 times the  
22 allowed level of pollutants, including NOx. The use of the defeat device by  
23 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
24 additional fuel costs, loss of warranty value, and diminished value of his vehicles.  
25 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
26 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicles on the  
27 reasonable, but mistaken, belief that his vehicles complied with United States  
28

1 emissions standards, was properly EPA certified, and would retain all of thier  
2 operating characteristics throughout their useful life.

3 **CC. Nevada Plaintiffs**

4 **1. Chad Ramos**

5 92. Plaintiff Chad Ramos is an individual domiciled in Eagle Mountain,  
6 Utah. In June, 2014, Plaintiff purchased a used 2012 VW Jetta TDI CleanDiesel from  
7 AutoNation Volkswagen, an authorized Volkswagen dealer in Las Vegas, Nevada.  
8 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
9 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
10 device which caused the vehicle to get an undue EPA certification and pass emissions  
11 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
12 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
13 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
14 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
15 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
16 so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
17 vehicle complied with United States emissions standards, was properly EPA certified,  
18 and would retain all of its operating characteristics throughout its useful life.

19 **DD. New Hampshire Plaintiffs**

20 **1. Steven Bolduc**

21 93. Plaintiff Steven Bolduc is an individual domiciled in Brentwood, NH. In  
22 June, 2013, Plaintiff purchased a used 2010 VW Jetta TDI CleanDiesel from Glen's  
23 Auto Sales, an authorized Volkswagen dealer in Fremont, NH Plaintiff purchased,  
24 and still owns, This vehicle. Unknown to Plaintiff at the time the vehicle was  
25 purchased, the vehicle was equipped with an emissions control defeat device which  
26 caused the vehicle to get an undue EPA certification and pass emissions tests, but at  
27 all other times emit up to 40 times the allowed level of pollutants, including NOx.  
28

1 The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss,  
2 future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
3 about and purposefully used the defeat device, but did not disclose the defeat device  
4 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
5 mistaken, belief that his vehicle complied with United States emissions standards, was  
6 properly EPA certified, and would retain all of its operating characteristics throughout  
7 its useful life.

8 **EE. New Jersey Plaintiffs**

9 **1. Joseph Avena**

10 94. Plaintiff Joseph Avena is an individual domiciled in Hamilton Square,  
11 NJ. In December, 2014, Plaintiff purchased a new 2015 VW Golf TDI SE  
12 CleanDiesel from VW of Hamilton, an authorized Volkswagen dealer in Hamilton,  
13 NJ. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time  
14 the vehicle was purchased, the vehicle was equipped with an emissions control defeat  
15 device which caused the vehicle to get an undue EPA certification and pass emissions  
16 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
17 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
18 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
19 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
20 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
21 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
22 standards, was properly EPA certified, and would retain all of its operating  
23 characteristics throughout its useful life.

24 **FF. New Mexico Plaintiffs**

25 **1. Andrew Masters**

26 95. Plaintiff Andrew Masters is an individual domiciled in Saratoga Springs,  
27 NY. In May, 2013, Plaintiff purchased a used VW Passat TDI SEL CleanDiesel from  
28

1 Uptown Volkswagen, an authorized Volkswagen dealer in Albuquerque, NM.  
2 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
3 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
4 device which caused the vehicle to get an undue EPA certification and pass emissions  
5 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
6 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
7 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
8 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
9 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
10 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
11 standards, was properly EPA certified, and would retain all of its operating  
12 characteristics throughout its useful life.

13 **GG. New York Plaintiffs**

14 **1. Steven Kolpan**

15 96. Plaintiff Steven Kolpan is an individual domiciled in West Hurley, NY.  
16 In February, 2015, Plaintiff purchased a new 2015 VW Passat 2.0L TDI SEL  
17 CleanDiesel from VW of Kingston, an authorized Volkswagen dealer in Kingston,  
18 NY. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time  
19 the vehicle was purchased, the vehicle was equipped with an emissions control defeat  
20 device which caused the vehicle to get an undue EPA certification and pass emissions  
21 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
22 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
23 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
24 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
25 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
26 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
27  
28

standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

## **HH. North Carolina Plaintiffs**

### **1. Paul Puryear**

97. Plaintiff Paul Puryear is an individual domiciled in Apex, NC. In March, 2013, Plaintiff purchased a used VW Jetta TDI CleanDiesel in Cary, North Carolina. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

## **II. North Dakota Plaintiffs**

### **1. Michelle Gramling**

98. Plaintiff Michelle Gramling is an individual domiciled in Bismarck, North Dakota. In September, 2015, Plaintiff purchased a new 2015 VW Jetta TDI CleanDiesel from an authorized Volkswagen dealer in Bismarck, North Dakota. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-

1 of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty  
2 value, and diminished value of his vehicle. Volkswagen knew about and purposefully  
3 used the defeat device, but did not disclose the defeat device and its effects to Plaintiff,  
4 so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her  
5 vehicle complied with United States emissions standards, was properly EPA certified,  
6 and would retain all of its operating characteristics throughout its useful life.

7 **JJ. Ohio Plaintiffs**

8 **1. David Pyle**

9 99. Plaintiff David Pyle is an individual domiciled in Fredericktown, OH. In  
10 January, 2012, Plaintiff purchased a new 2012 VW Jetta TDI CleanDiesel from  
11 Hatfield Volkswagen, an authorized Volkswagen dealer in Columbus, OH. Plaintiff  
12 purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle  
13 was purchased, the vehicle was equipped with an emissions control defeat device  
14 which caused the vehicle to get an undue EPA certification and pass emissions tests,  
15 but at all other times emit up to 40 times the allowed level of pollutants, including  
16 NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
17 loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
18 about and purposefully used the defeat device, but did not disclose the defeat device  
19 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
20 mistaken, belief that his vehicle complied with United States emissions standards, was  
21 properly EPA certified, and would retain all of its operating characteristics throughout  
22 its useful life.

23 **KK. Oklahoma Plaintiffs**

24 **1. Heather Greenfield**

25 100. Plaintiff Heather Greenfield is an individual domiciled in Norman, OK.  
26 In August, 2010, Plaintiff purchased a new VW Jetta TDI CleanDiesel from  
27 Volkswagen of Tulsa, an authorized Volkswagen dealer in Tulsa, OK. Plaintiff  
28

1 purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle  
2 was purchased, the vehicle was equipped with an emissions control defeat device  
3 which caused the vehicle to get an undue EPA certification and pass emissions tests,  
4 but at all other times emit up to 40 times the allowed level of pollutants, including  
5 NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
6 loss, future attempted repairs, and diminished value of her vehicle. Volkswagen knew  
7 about and purposefully used the defeat device, but did not disclose the defeat device  
8 and its effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but  
9 mistaken, belief that her vehicle complied with United States emissions standards, was  
10 properly EPA certified, and would retain all of its operating characteristics throughout  
11 its useful life.

12 **LL. Oregon Plaintiffs**

13 **1. Kyle Boylan**

14 101. Plaintiff Kyle Boylan is an individual domiciled in Sherwood, OR. In  
15 March, 2013, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Armstrong  
16 Volkswagen, an authorized Volkswagen dealer in Gladstone, OR. Plaintiff purchased,  
17 and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was  
18 purchased, the vehicle was equipped with an emissions control defeat device which  
19 caused the vehicle to get an undue EPA certification and pass emissions tests, but at  
20 all other times emit up to 40 times the allowed level of pollutants, including NOx.  
21 The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss,  
22 future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
23 about and purposefully used the defeat device, but did not disclose the defeat device  
24 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
25 mistaken, belief that his vehicle complied with United States emissions standards, was  
26 properly EPA certified, and would retain all of its operating characteristics throughout  
27 its useful life.  
28



1 **MM. Pennsylvania Plaintiffs**

2 **1. Ralph Mendenhall**

3 102. Plaintiff Ralph Mendenhall is an individual domiciled in Downingtown,  
4 PA. In February, 2015, Plaintiff purchased a new 2014 VW Jetta TDI CleanDiesel  
5 from Jeff D'Ambrosio Volkswagen, an authorized Volkswagen dealer in Downingtown,  
6 PA. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time  
7 the vehicle was purchased, the vehicle was equipped with an emissions control defeat  
8 device which caused the vehicle to get an undue EPA certification and pass emissions  
9 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
10 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
11 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
12 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
13 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
14 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
15 standards, was properly EPA certified, and would retain all of its operating  
16 characteristics throughout its useful life.

17 **NN. Rhode Island Plaintiffs**

18 **1. Alexander Baittinger**

19 103. Plaintiff Alexander Baittinger is an individual domiciled in North  
20 Kingstown, RI. In May, 2013, Plaintiff purchased a new VW Jetta SportWagen TDI  
21 CleanDiesel from Scott VW, an authorized Volkswagen dealer in East Providence, RI.  
22 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
23 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
24 device which caused the vehicle to get an undue EPA certification and pass emissions  
25 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
26 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
27 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
28

1 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
2 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
3 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
4 standards, was properly EPA certified, and would retain all of its operating  
5 characteristics throughout its useful life.

6 **OO. South Carolina Plaintiffs**

7 **1. Andrew Bell**

8 104. Plaintiff Andrew Bell is an individual domiciled in Charlestown, SC. In  
9 August, 2011, Plaintiff purchased a new Jetta SportWagen TDI CleanDiesel from Low  
10 Country VW, an authorized Volkswagen dealer in Mt. Pleasant, SC. Plaintiff  
11 purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle  
12 was purchased, the vehicle was equipped with an emissions control defeat device  
13 which caused the vehicle to get an undue EPA certification and pass emissions tests,  
14 but at all other times emit up to 40 times the allowed level of pollutants, including  
15 NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
16 loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
17 about and purposefully used the defeat device, but did not disclose the defeat device  
18 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
19 mistaken, belief that his vehicle complied with United States emissions standards, was  
20 properly EPA certified, and would retain all of its operating characteristics throughout  
21 its useful life.

22 **PP. South Dakota Plaintiffs**

23 **1. Gary Van Guilder**

24 105. Plaintiff Gary Van Guilder is an individual domiciled in Brookings, SD.  
25 In August 2010, Plaintiff purchased a new VW Jetta TDI 4 door sedan CleanDiesel  
26 from Ken Vance Volkswagen, an authorized Volkswagen dealer in Eau Claire, WI.  
27 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
28

1 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
2 device which caused the vehicle to get an undue EPA certification and pass emissions  
3 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
4 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
5 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
6 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
7 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
8 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
9 standards, was properly EPA certified, and would retain all of its operating  
10 characteristics throughout its useful life.

11 **QQ. Tennessee Plaintiffs**

12 **1. Barry Cross**

13 106. Plaintiff Barry Cross is an individual domiciled in Jackson, Tennessee.  
14 In March, 2011, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Gary  
15 Matthews VW, an authorized Volkswagen dealer in Clarksville, Tennessee. Plaintiff  
16 purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle  
17 was purchased, the vehicle was equipped with an emissions control defeat device  
18 which caused the vehicle to get an undue EPA certification and pass emissions tests,  
19 but at all other times emit up to 40 times the allowed level of pollutants, including  
20 NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
21 loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
22 about and purposefully used the defeat device, but did not disclose the defeat device  
23 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
24 mistaken, belief that his vehicle complied with United States emissions standards, was  
25 properly EPA certified, and would retain all of its operating characteristics throughout  
26 its useful life.  
27  
28

1     **RR.   Texas Plaintiffs**

2             **1.     Justin Holloway**

3             107. Plaintiff Justin Holloway is an individual domiciled in Abilene, TX. In  
4             September, 2015, Plaintiff purchased a new VW Passat TDI CleanDiesel from  
5             Volkswagen of Corpus Christi, an authorized Volkswagen dealer in Corpus Christi,  
6             TX. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time  
7             the vehicle was purchased, the vehicle was equipped with an emissions control defeat  
8             device which caused the vehicle to get an undue EPA certification and pass emissions  
9             tests, but at all other times emit up to 40 times the allowed level of pollutants,  
10            including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
11            of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
12            Volkswagen knew about and purposefully used the defeat device, but did not disclose  
13            the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
14            reasonable, but mistaken, belief that his vehicle complied with United States emissions  
15            standards, was properly EPA certified, and would retain all of its operating  
16            characteristics throughout its useful life.

17     **SS.   Utah Plaintiffs**

18             **1.     Kelly King**

19             108. Plaintiff Kelly King is an individual domiciled in Centerville, Utah. In  
20             August, 2010, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Strong  
21             Volkswagen, an authorized Volkswagen dealer in Salt Lake City, Utah. Plaintiff  
22             purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle

1 was purchased, the vehicle was equipped with an emissions control defeat device  
2 which caused the vehicle to get an undue EPA certification and pass emissions tests,  
3 but at all other times emit up to 40 times the allowed level of pollutants, including  
4 NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket  
5 loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
6 about and purposefully used the defeat device, but did not disclose the defeat device  
7 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
8 mistaken, belief that his vehicle complied with United States emissions standards, was  
9 properly EPA certified, and would retain all of its operating characteristics throughout  
10 its useful life.

11 **TT. Vermont Plaintiffs**

12 **1. Karen Norman**

13 109. Plaintiff Karen Norman is an individual domiciled in Jericho, Vermont.  
14 In June, 2009, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Lewis  
15 Motors n/k/a Shearer Auto Group, an authorized Volkswagen dealer in South  
16 Burlington, Vermont. Plaintiff purchased, and still owns, this vehicle. Unknown to  
17 Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an  
18 emissions control defeat device which caused the vehicle to get an undue EPA  
19 certification and pass emissions tests, but at all other times emit up to 40 times the  
20 allowed level of pollutants, including NOx. The use of the defeat device by  
21 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and  
22 diminished value of her vehicle. Volkswagen knew about and purposefully used the  
23 defeat device, but did not disclose the defeat device and its effects to Plaintiff, so  
24 Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle  
25 complied with United States emissions standards, was properly EPA certified, and  
26 would retain all of its operating characteristics throughout its useful life.  
27  
28

1 **UU. Virginia Plaintiffs**

2 **1. Andrew Ventura**

3 110. Plaintiff Andrew Ventura is an individual domiciled in Stuarts Draft,  
4 Virginia. In November 2008, Plaintiff purchased a new 2009 Jetta TDI CleanDiesel  
5 from Karen Radley Volkswagen, an authorized Volkswagen dealer in Woodbridge,  
6 Virginia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the  
7 time the vehicle was purchased, the vehicle was equipped with an emissions control  
8 defeat device which caused the vehicle to get an undue EPA certification and pass  
9 emissions tests, but at all other times emit up to 40 times the allowed level of  
10 pollutants, including NOx. The use of the defeat device by Volkswagen has caused  
11 Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss  
12 of warranty value, and diminished value of his vehicle. Volkswagen knew about and  
13 purposefully used the defeat device, but did not disclose the defeat device and its  
14 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken,  
15 belief that his vehicle complied with United States emissions standards, was properly  
16 EPA certified, and would retain all of its operating characteristics throughout its useful  
17 life.

18 **VV. Washington Plaintiffs**

19 **1. Troy Ponto**

20 111. Plaintiff Troy Ponto is an individual domiciled in Graham, WA. In May,  
21 2013, Plaintiff purchased a new VW Passat TDI CleanDiesel from Auburn  
22 Volkswagen, an authorized Volkswagen dealer in Auburn, WA. Plaintiff purchased,  
23 and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was  
24 purchased, the vehicle was equipped with an emissions control defeat device which  
25 caused the vehicle to get an undue EPA certification and pass emissions tests, but at  
26 all other times emit up to 40 times the allowed level of pollutants, including NOx.  
27 The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss,  
28

1 future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
2 about and purposefully used the defeat device, but did not disclose the defeat device  
3 and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but  
4 mistaken, belief that his vehicle complied with United States emissions standards, was  
5 properly EPA certified, and would retain all of its operating characteristics throughout  
6 its useful life.

7 **WW. West Virginia Plaintiffs**

8 **1. Scott Taylor**

9 112. Plaintiff Scott Taylor is an individual domiciled in Martinsburg, West  
10 Virginia. In April, 2014, Plaintiff purchased a used 2011 Jetta TDI CleanDiesel from  
11 a used car dealer in Martinsburg, West Virginia. Plaintiff purchased, and still owns,  
12 this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle  
13 was equipped with an emissions control defeat device which caused the vehicle to get  
14 an undue EPA certification and pass emissions tests, but at all other times emit up to  
15 40 times the allowed level of pollutants, including NOx. The use of the defeat device  
16 by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future  
17 additional fuel costs, loss of warranty value, and diminished value of his vehicle.  
18 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
19 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
20 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
21 standards, was properly EPA certified, and would retain all of its operating  
22 characteristics throughout its useful life.

23 **XX. Wisconsin Plaintiffs**

24 **1. Carlos Ortiz**

25 113. Plaintiff Carlos Ortiz is an individual domiciled in West Allis, Wisconsin.  
26 In May 2012, Plaintiff purchased a new 2012 VW Golf TDI CleanDiesel from  
27 Boucher Volkswagen - Racine, an authorized Volkswagen dealer in Racine, WI.  
28



1 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
2 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
3 device which caused the vehicle to get an undue EPA certification and pass emissions  
4 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
5 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
6 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
7 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
8 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
9 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
10 standards, was properly EPA certified, and would retain all of its operating  
11 characteristics throughout its useful life.

## 12 **YY. Wyoming Plaintiffs**

### 13 **1. Brian Mills**

14 114. Plaintiff Brian Mills is an individual domiciled in Cheyenne, Wyoming.  
15 In September, 2015, Plaintiff purchased a new 2015 VW Passat CleanDiesel from  
16 Greeley Volkswagen, an authorized Volkswagen dealer in Greeley, Colorado.  
17 Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the  
18 vehicle was purchased, the vehicle was equipped with an emissions control defeat  
19 device which caused the vehicle to get an undue EPA certification and pass emissions  
20 tests, but at all other times emit up to 40 times the allowed level of pollutants,  
21 including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-  
22 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
23 Volkswagen knew about and purposefully used the defeat device, but did not disclose  
24 the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
25 reasonable, but mistaken, belief that his vehicle complied with United States emissions  
26 standards, was properly EPA certified, and would retain all of its operating  
27 characteristics throughout its useful life.  
28

**ZZ. Defendants**

115. Volkswagen Group of America, Inc., is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171.

116. Volkswagen Aktiengesellschaft, doing business as Volkswagen Group and/or Volkswagen AG (“Volkswagen AG”), has its principal place of business in Wolfsburg, Germany. Volkswagen AG is a corporation organized under the laws of Germany and it is the parent corporation of Volkswagen Group of America, Inc.

117. Volkswagen Group of American, Inc., and Volkswagen AG were and are at all times relevant to the allegations in this complaint working in concert under the common objective to engage in the emissions scheme described in this complaint. Each of Volkswagen Group of America and Volkswagen AG were and are the agents of each other and have acted and act for their common goals and profit. Therefore, all acts and knowledge ascribed to one of Volkswagen Group of America or Volkswagen AG are properly imputed to the other. Volkswagen Group of America and Volkswagen AG are referred to collectively herein as Volkswagen or “VW.”

118. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Affected Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its parents, affiliates and agents designed, manufactured, and installed the CleanDiesel engine systems in the Affected Vehicles, which included the “defeat device.” Volkswagen and/or its parents, affiliates and agents developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

## VI. TOLLING OF THE STATUTE OF LIMITATIONS

### A. Discovery Rule Tolling

119. Class Members had no way of knowing about Volkswagen's deception with respect to its CleanDiesel engine system and "defeat device." It took federal EPA and California Air Resources Board investigations to uncover Volkswagen's deception, which involved sophisticated software manipulation on Volkswagen's part. As reported by the *Los Angeles Times* on September 18, 2015, it took California Air Resources Board testing on a special dynamometer in a laboratory, open road testing using portable equipment, and the use of special testing devised by the Board to uncover Volkswagen's scheme and to detect how software on the engine's electronic control module was deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly hiding its behavior from regulators and consumers. This is the quintessential case for tolling.

120. Within the time period of any applicable statutes of limitation, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting the Company's true position with respect to the emission qualities of its vehicles.

121. Plaintiffs and the other Class members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen did not report information within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a reasonable and diligent investigation have disclosed that Volkswagen had information in its possession about the existence of its sophisticated emissions scheme and that it opted to conceal that information, which was discovered by Plaintiffs only shortly before this action was filed. Nor in any event would such an investigation on the part of Plaintiffs and other Class members have disclosed that Volkswagen valued profits over compliance with federal and state

1 law, or the trust that Plaintiffs and other Class members had placed in its  
2 representations, or that, necessarily, Volkswagen actively discouraged its personnel  
3 from raising or disclosing issues with regard to the true quality and quantity of the  
4 emissions, and the emissions software, of its vehicles, or of Volkswagen's emissions  
5 scheme.

6 122. For these reasons, all applicable statutes of limitation have been tolled by  
7 operation of the discovery rule with respect to claims as to all vehicles identified  
8 herein.

9 **B. Fraudulent Concealment Tolling**

10 123. All applicable statutes of limitation have also been tolled by  
11 Volkswagen's knowing and active fraudulent concealment and denial of the facts  
12 alleged herein throughout the time period relevant to this action.

13 124. Instead of disclosing its emissions scheme, or that the quality and  
14 quantity of emissions from the subject vehicles were far worse than represented, and  
15 of its disregard of federal and state law, Volkswagen falsely represented that its  
16 vehicles complied with federal and state emissions standards, and that it was a  
17 reputable manufacturer whose representations could be trusted.

18 **C. Estoppel**

19 125. Volkswagen was under a continuous duty to disclose to Plaintiffs and the  
20 other Class members the true character, quality, and nature of emissions from the  
21 vehicles at issue, and of those vehicles' emissions systems, and of the compliance of  
22 those systems with applicable federal and state law.

23 126. Volkswagen knowingly, affirmatively, and actively concealed the true  
24 nature, quality, and character of the emissions systems, and the emissions, of the  
25 vehicles at issue.

26 127. Volkswagen was also under a continuous duty to disclose to Plaintiffs  
27 and Class members that it had engaged in the scheme complained of herein to evade  
28

1 federal and state emissions and clean air standards, and that it systematically devalued  
 2 compliance with, and deliberately flouted, federal and state laws regulating vehicle  
 3 emissions and clean air.

4 128. Based on the foregoing, Volkswagen is estopped from relying on any  
 5 statutes of limitations in defense of this action.

## 6 **VII. CLASS ALLEGATIONS**

7 129. Plaintiffs bring this action pursuant to the provisions of Rules 23(a),  
 8 (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and  
 9 the following class and subclasses (collectively, the “Classes”):

### 10 **The Nationwide Class**

11 All persons or entities in the United States who owned  
 12 and/or leased an “Affected Vehicle” as of September 18,  
 13 2015. Affected Vehicles include, without limitation, the  
 14 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
 15 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
 16 Passat; and MY 2009-2015 Audi A3.

### 17 **The Alabama Subclass**

18 All persons or entities in the state of Alabama who owned  
 19 and/or leased an “Affected Vehicle” as of September 18,  
 20 2015. Affected Vehicles include, without limitation, the  
 21 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
 22 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
 23 Passat; and MY 2009-2015 Audi A3.

### 24 **The Alaska Subclass**

25 All persons or entities in the state of Alaska who owned  
 26 and/or leased an “Affected Vehicle” as of September 18,  
 27 2015. Affected Vehicles include, without limitation, the  
 28 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
 Passat; and MY 2009-2015 Audi A3.

### **The Arizona Subclass**

All persons or entities in the state of Arizona who owned  
 and/or leased an “Affected Vehicle” as of September 18,

1 2015. Affected Vehicles include, without limitation, the  
2 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
3 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.

#### 4 **The Arkansas Subclass**

5 All persons or entities in the state of Arkansas who owned  
6 and/or leased an "Affected Vehicle" as of September 18,  
7 2015. Affected Vehicles include, without limitation, the  
8 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.

#### 9 **The California Subclass**

10 All persons or entities in the state of California who owned  
11 and/or leased an "Affected Vehicle" as of September 18,  
12 2015. Affected Vehicles include, without limitation, the  
13 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.

#### 14 **The Colorado Subclass**

15 All persons or entities in the state of Colorado who owned  
16 and/or leased an "Affected Vehicle" as of September 18,  
17 2015. Affected Vehicles include, without limitation, the  
18 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.

#### 19 **The Connecticut Subclass**

20 All persons or entities in the state of Connecticut who owned  
21 and/or leased an "Affected Vehicle" as of September 18,  
22 2015. Affected Vehicles include, without limitation, the  
23 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.

#### 24 **The Delaware Subclass**

25 All persons or entities in the state of Delaware who owned  
26 and/or leased an "Affected Vehicle" as of September 18,  
27 2015. Affected Vehicles include, without limitation, the  
28 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015

1 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
2 Passat; and MY 2009-2015 Audi A3.

3 **The Florida Subclass**

4 All persons or entities in the state of Florida who owned  
5 and/or leased an “Affected Vehicle” as of September 18,  
6 2015. Affected Vehicles include, without limitation, the  
7 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
8 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
9 Passat; and MY 2009-2015 Audi A3.

10 **The Georgia Subclass**

11 All persons or entities in the state of Georgia who owned  
12 and/or leased an “Affected Vehicle” as of September 18,  
13 2015. Affected Vehicles include, without limitation, the  
14 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
15 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
16 Passat; and MY 2009-2015 Audi A3.

17 **The Hawaii Subclass**

18 All persons or entities in the state of Hawaii who owned  
19 and/or leased an “Affected Vehicle” as of September 18,  
20 2015. Affected Vehicles include, without limitation, the  
21 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
22 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
23 Passat; and MY 2009-2015 Audi A3.

24 **The Idaho Subclass**

25 All persons or entities in the state of Idaho who owned  
26 and/or leased an “Affected Vehicle” as of September 18,  
27 2015. Affected Vehicles include, without limitation, the  
28 diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.

**The Illinois Subclass**

All persons or entities in the state of Illinois who owned  
and/or leased an “Affected Vehicle” as of September 18,  
2015. Affected Vehicles include, without limitation, the  
diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015  
VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW  
Passat; and MY 2009-2015 Audi A3.



**The Indiana Subclass**

All persons or entities in the state of Indiana who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Iowa Subclass**

All persons or entities in the state of Iowa who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Kansas Subclass**

All persons or entities in the state of Kansas who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Kentucky Subclass**

All persons or entities in the state of Kentucky who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Louisiana Subclass**

All persons or entities in the state of Louisiana who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Maine Subclass**

All persons or entities in the state of Maine who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Maryland Subclass**

All persons or entities in the state of Maryland who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Massachusetts Subclass**

All persons or entities in the state of Massachusetts who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Michigan Subclass**

All persons or entities in the state of Michigan who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Minnesota Subclass**

All persons or entities in the state of Minnesota who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Mississippi Subclass**

All persons or entities in the state of Mississippi who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Missouri Subclass**

All persons or entities in the state of Missouri who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Montana Subclass**

All persons or entities in the state of Montana who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Nebraska Subclass**

All persons or entities in the state of Nebraska who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Nevada Subclass**

All persons or entities in the state of Nevada who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The New Hampshire Subclass**

All persons or entities in the state of New Hampshire who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The New Jersey Subclass**

All persons or entities in the state of New Jersey who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The New Mexico Subclass**

All persons or entities in the state of New Mexico who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The New York Subclass**

All persons or entities in the state of New York who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The North Carolina Subclass**

All persons or entities in the state of North Carolina who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The North Dakota Subclass**

All persons or entities in the state of North Dakota who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Ohio Subclass**

All persons or entities in the state of Ohio who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Oklahoma Subclass**

All persons or entities in the state of Oklahoma who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Oregon Subclass**

All persons or entities in the state of Oregon who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Pennsylvania Subclass**

All persons or entities in the state of Pennsylvania who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Rhode Island Subclass**

All persons or entities in the state of Rhode Island who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The South Carolina Subclass**

All persons or entities in the state of South Carolina who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The South Dakota Subclass**

All persons or entities in the state of South Dakota who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Tennessee Subclass**

All persons or entities in the state of Tennessee who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Texas Subclass**

All persons or entities in the state of Texas who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Utah Subclass**

All persons or entities in the state of Utah who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Vermont Subclass**

All persons or entities in the state of Vermont who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Virginia Subclass**

All persons or entities in the state of Virginia who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Washington Subclass**

All persons or entities in the state of Washington who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The West Virginia Subclass**

All persons or entities in the state of West Virginia who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.



**The Wisconsin Subclass**

All persons or entities in the state of Wisconsin who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Wyoming Subclass**

All persons or entities in the state of Wyoming who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The District of Columbia Subclass**

All persons or entities in the District of Columbia who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

130. Excluded from the Class are individuals who have personal injury claims resulting from the installation of the defeat device in the CleanDiesel engine system. Also excluded from the Class are Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

131. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

1           132. This action has been brought and may be properly maintained on behalf  
2 of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

3           133. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of  
4 the Classes are so numerous and geographically dispersed that individual joinder of all  
5 Class members is impracticable. While Plaintiffs are informed and believe that there  
6 are not less than hundreds of thousands of members of the Class, and at least hundreds  
7 of members of each subclass, the precise number of Class and Subclass members is  
8 unknown to Plaintiffs, but may be ascertained from Volkswagen's books and records.  
9 Class members may be notified of the pendency of this action by recognized, Court-  
10 approved notice dissemination methods, which may include U.S. mail, electronic mail,  
11 Internet postings, and/or published notice.

12           134. Commonality and Predominance: Federal Rule of Civil Procedure  
13 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which  
14 predominate over any questions affecting individual Class members, including,  
15 without limitation:

- 16           a) Whether Volkswagen engaged in the conduct alleged herein;
- 17           b) Whether Volkswagen designed, advertised, marketed, distributed,  
18           leased, sold, or otherwise placed Affected Vehicles into the stream  
19           of commerce in the United States;
- 20           c) Whether the CleanDiesel engine system in the Affected Vehicles  
21           contains a defect in that it does not comply with U.S. EPA  
22           requirements and federal and state emissions regulations;
- 23           d) Whether the CleanDiesel engine systems in Affected Vehicles can  
24           be made to comply with EPA and state standards without  
25           substantially degrading the performance and/or efficiency of the  
26           Affected Vehicles;

- e) Whether Volkswagen knew about the defeat device and, if so, how long Volkswagen has known;
- f) Whether Volkswagen designed, manufactured, marketed, and distributed Affected Vehicles with a defeat device;
- g) Whether Volkswagen's conduct violates consumer protection statutes, false advertising laws, sales contracts, warranty laws, and other laws as asserted herein;
- h) Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles;
- i) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- j) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

135. Typicality: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Volkswagen's wrongful conduct as described above.

136. Adequacy: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representative because their interests do not conflict with the interests of the other members of the Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

137. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2): Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final

injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

138. Superiority: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Volkswagen, so it would be impracticable for the members of the Classes to individually seek redress for Volkswagen's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## VIII. VIOLATIONS ALLEGED

### A. Claims Brought on Behalf of the Nationwide Class and the Virginia Subclass Under Virginia Law

#### COUNT I FRAUD BY CONCEALMENT UNDER VIRGINIA LAW

139. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

140. This claim is brought on behalf of the Nationwide Class and the Virginia Subclass.

141. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a

1 secret scheme to evade federal and state vehicle emissions standards by installing  
2 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
3 which contributes to the creation of ozone and smog. The software installed on the  
4 vehicles at issue was designed nefariously to kick-in during emissions certification  
5 testing, such that the vehicles would show far lower emissions than when actually  
6 operating on the road. The result was what Volkswagen intended: vehicles passed  
7 emissions certifications by way of deliberately induced false readings. Reportedly,  
8 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
9 vehicles at up to 40 times applicable standards.

10 142. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
11 representations. They had no way of knowing that Volkswagen's representations were  
12 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
13 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
14 not, unravel Volkswagen's deception on their own.

15 143. Volkswagen concealed and suppressed material facts concerning what is  
16 evidently the true culture of Volkswagen – one characterized by an emphasis on  
17 profits and sales above compliance with federal and state clean air laws, and emissions  
18 regulations that are meant to protect the public and consumers. It also emphasized  
19 profits and sales over the trust that Plaintiffs and Class members placed in its  
20 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
21 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
22 intentional manipulation of the system. That's just a whole other level of not only  
23 lying to the government, but also lying to your consumer. People buy diesel cars from  
24 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
25 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
26 want to be spewing noxious gases into the environment."  
27  
28

1           144. Necessarily, Volkswagen also took steps to ensure that its employees did  
2 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
3 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
4 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
5 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
6 law, including federal and state clean air laws and emissions regulations, and that its  
7 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
8 representations were material to consumers, both because they concerned the quality  
9 of the affected vehicles, including their compliance with applicable federal and state  
10 law and regulations regarding clean air and emissions, and also because the  
11 representations played a significant role in the value of the vehicles. As Volkswagen  
12 well knew, its customers, including Plaintiffs and Class members, highly valued that  
13 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
14 accordingly.

15           145. Volkswagen had a duty to disclose its emissions scheme because  
16 knowledge of the scheme and its details were known and/or accessible only to  
17 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
18 maintenance of its scheme, and because Volkswagen knew the facts were not known  
19 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
20 duty to disclose because it made general affirmative representations about the qualities  
21 of its vehicles with respect to emissions standards, starting with references to them as  
22 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
23 and incomplete without the disclosure of the additional facts set forth above regarding  
24 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
25 respect to compliance with federal and state clean air laws and emissions regulations,  
26 and its actual practices with respect to the vehicles at issue. Having volunteered to  
27 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
28

1 partial truth, but the entire truth. These omitted and concealed facts were material  
2 because they directly impact the value of the Affected Vehicles purchased or leased by  
3 Plaintiffs and Class members. Whether a manufacturer's products comply with  
4 federal and state clean air laws and emissions regulations, and whether that  
5 manufacturer tells the truth with respect to such compliance or non-compliance, are  
6 material concerns to a consumer, including with respect to the emissions certification  
7 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
8 members that they were purchasing *clean* diesel vehicles, and certification testing  
9 appeared to confirm this – except that, secretly, Volkswagen had subverted the testing  
10 process thoroughly.

11 146. Volkswagen actively concealed and/or suppressed these material facts, in  
12 whole or in part, to pad and protect its profits and to avoid the perception that its  
13 vehicles did not or could not comply with federal and state laws governing clean air  
14 and emissions, which perception would hurt the brand's image and cost Volkswagen  
15 money, and it did so at the expense of Plaintiffs and Class members.

16 147. On information and belief, Volkswagen has still not made full and  
17 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
18 concealing material information regarding the emission qualities of its vehicles and its  
19 emissions scheme.

20 148. Plaintiffs and Class members were unaware of the omitted material facts  
21 referenced herein, and they would not have acted as they did if they had known of the  
22 concealed and/or suppressed facts, in that they would not have purchased purportedly  
23 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
24 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
25 light of the information concealed from them. Plaintiffs' and Class Members' actions  
26 were justified. Volkswagen was in exclusive control of the material facts, and such  
27 facts were not known to the public, Plaintiffs, or Class members.



1           149. Because of the concealment and/or suppression of the facts, Plaintiffs and  
2 Class members have sustained damage because they own vehicles that are diminished  
3 in value as a result of Volkswagen's concealment of the true quality and quantity of  
4 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
5 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
6 branded vehicles and the serious issues engendered by Volkswagen's corporate  
7 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
8 scheme, and the company's callous disregard for compliance with applicable federal  
9 and state law and regulations, Plaintiffs and Class members who purchased or leased  
10 new or previously owned vehicles would have paid less for their vehicles or would not  
11 have purchased or leased them at all.

12           150. The value of Plaintiffs' and Class Members' vehicles has diminished as a  
13 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
14 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
15 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
16 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
17 value for the vehicles. In addition, Class members are entitled to damages for loss of  
18 use, costs of additional fuel, costs of unused warranties, and other damages to be  
19 proved at trial.

20           151. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
21 damages in an amount to be proven at trial.

22           152. Volkswagen's acts were done wantonly, maliciously, oppressively,  
23 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
24 members' rights and the representations that Volkswagen made to them, in order to  
25 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
26 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
27 such conduct in the future, which amount is to be determined according to proof.  
28

153. Plaintiffs plead this count pursuant to the law of Virginia, where Volkswagen has its United States headquarters, on behalf of all members of the Nationwide Class. As necessary, and in the alternative, Plaintiffs stand ready to plead sub-classes, based on the domicile at pertinent times of members of the Nationwide Class, to allege fraudulent concealment under the laws of states other than Virginia.

**COUNT II**  
**VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**  
**(Va. Code Ann. §§ 59.1-196, *et seq.*)**

154. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

155. This claim is brought on behalf of the Nationwide Class and the Virginia Subclass.

156. The Virginia Consumer Protection Act prohibits “...(5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; ... (8) advertising goods or services with intent not to sell them as advertised ...; [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]” VA. CODE ANN. § 59.1-200(A).

157. Defendants are each a “person” as defined by VA. CODE ANN. § 59.1-198. The transactions between Plaintiffs and the other Class members on one hand and Volkswagen on the other, leading to the purchase or lease of the Affected Vehicles by Plaintiffs and the other Class members, are “consumer transactions” as defined by VA. CODE ANN. § 59.1-198, because the Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

158. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the defeat device in Affected Vehicles as described above. Accordingly, Volkswagen engaged in acts and practices violating VA. CODE ANN.

1 § 59.1-200(A), including representing that Affected Vehicles have characteristics,  
2 uses, benefits, and qualities which they do not have; representing that Affected  
3 Vehicles are of a particular standard and quality when they are not; advertising  
4 Affected Vehicles with the intent not to sell them as advertised; and otherwise  
5 engaging in conduct likely to deceive.

6 159. Volkswagen's actions as set forth above occurred in the conduct of trade  
7 or commerce.

8 160. Volkswagen's conduct proximately caused injuries to Plaintiffs and the  
9 other Class members.

10 161. Plaintiffs and the other Class members were injured as a result of  
11 Volkswagen's conduct in that Plaintiffs and the other Class members overpaid for  
12 their Affected Vehicles and did not receive the benefit of their bargain, and their  
13 Affected Vehicles have suffered a diminution in value. These injuries are the direct  
14 and natural consequence of Volkswagen's misrepresentations and omissions.

15 162. Volkswagen actively and willfully concealed and/or suppressed the  
16 material facts regarding the defective and non-EPA compliant CleanDiesel engine  
17 system, the defeat device and the Affected Vehicles, in whole or in part, with the  
18 intent to deceive and mislead Plaintiffs and the other Class members and to induce  
19 Plaintiffs and the other Class members to purchase or lease Affected Vehicles at a  
20 higher price, which did not match the Affected Vehicles' true value. Plaintiffs and the  
21 other Class members therefore seek treble damages.

22 **COUNT III**  
23 **BREACH OF CONTRACT**  
**(Based on Virginia Law)**

24 163. Plaintiffs incorporate by reference all preceding allegations as though  
25 fully set forth herein.

26 164. Plaintiffs bring this Count on behalf new or certified pre-owned  
27 purchasers in the Nationwide Class and Virginia Subclass.  
28

1           165. Volkswagen's misrepresentations and omissions alleged herein, including  
2 Volkswagen's failure to disclose the CleanDiesel engine system was not EPA-  
3 compliant and the existence of the defeat device as alleged herein, caused Plaintiffs  
4 and the other Class members to make their purchases or leases of their Affected  
5 Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other  
6 Class members would not have purchased or leased these Affected Vehicles, would  
7 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
8 would have purchased or leased less expensive alternative vehicles that did not contain  
9 non EPA-compliant engine systems and a defeat device. Accordingly, Plaintiffs and  
10 the other Class members overpaid for their Affected Vehicles and did not receive the  
11 benefit of their bargain.

12           166. Each and every sale or lease of an Affected Vehicle by an authorized  
13 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
14 lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the  
15 other Class members defective Affected Vehicles and by misrepresenting or failing to  
16 disclose the CleanDiesel engine system was not EPA-compliant and failing to disclose  
17 the existence of the defeat device, including information known to Volkswagen  
18 rendering each Affected Vehicle illegal under federal and state environmental laws,  
19 and thus less valuable, than vehicles not equipped with CleanDiesel engine systems.

20           167. As a direct and proximate result of Volkswagen's breach of contract,  
21 Plaintiffs and the Class have been damaged in an amount to be proven at trial, which  
22 shall include, but is not limited to, all compensatory damages, incidental and  
23 consequential damages, and other damages allowed by law.  
24  
25  
26  
27  
28

**B. Claims on Behalf of the Alabama Subclass**

**COUNT I  
VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT  
(ALA. CODE § 8-19-1, *et seq.*)**

168. Plaintiff Arthur Scharein (“Plaintiff,” for purposes of all Alabama Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

169. Plaintiff intends to assert a claim under the Alabama Deceptive Trade Practices Act (“Alabama DTPA”) which proscribes: “(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” ALA. CODE § 8-19-5. Plaintiff will make a demand in satisfaction of ALA. CODE § 8-19-10(e), and may amend this Complaint to assert claims under the DTPA once the required 15 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the DTPA.

**COUNT II  
FRAUD BY CONCEALMENT**

170. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

171. This claim is brought on behalf of the Alabama Subclass.

172. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,

1 which contributes to the creation of ozone and smog. The software installed on the  
2 vehicles at issue was designed nefariously to kick-in during emissions certification  
3 testing, such that the vehicles would show far lower emissions than when actually  
4 operating on the road. The result was what Volkswagen intended: vehicles passed  
5 emissions certifications by way of deliberately induced false readings. Reportedly,  
6 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
7 vehicles at up to 40 times applicable standards.

8 173. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
9 representations. They had no way of knowing that Volkswagen's representations were  
10 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
11 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
12 not, unravel Volkswagen's deception on their own.

13 174. Volkswagen concealed and suppressed material facts concerning what is  
14 evidently the true culture of Volkswagen—one characterized by an emphasis on  
15 profits and sales above compliance with federal and state clean air laws, and emissions  
16 regulations that are meant to protect the public and consumers. It also emphasized  
17 profits and sales over the trust that Plaintiffs and Class members placed in its  
18 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
19 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
20 intentional manipulation of the system. That's just a whole other level of not only  
21 lying to the government, but also lying to your consumer. People buy diesel cars from  
22 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
23 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
24 want to be spewing noxious gases into the environment."

25 175. Necessarily, Volkswagen also took steps to ensure that its employees did  
26 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
27 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
28

1 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
2 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
3 law, including federal and state clean air laws and emissions regulations, and that its  
4 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
5 representations were material to consumers, both because they concerned the quality  
6 of the Affected Vehicles, including their compliance with applicable federal and state  
7 laws and regulations regarding clean air and emissions, and also because the  
8 representations played a significant role in the value of the vehicles. As Volkswagen  
9 well knew, its customers, including Plaintiffs and Class members, highly valued that  
10 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
11 accordingly.

12 176. Volkswagen had a duty to disclose its emissions scheme because  
13 knowledge of the scheme and its details were known and/or accessible only to  
14 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
15 maintenance of its scheme, and because Volkswagen knew the facts were not known  
16 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
17 duty to disclose because it made general affirmative representations about the qualities  
18 of its vehicles with respect to emissions standards, starting with references to them as  
19 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
20 and incomplete without the disclosure of the additional facts set forth above regarding  
21 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
22 respect to compliance with federal and state clean air laws and emissions regulations,  
23 and its actual practices with respect to the vehicles at issue. Having volunteered to  
24 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
25 partial truth, but the entire truth. These omitted and concealed facts were material  
26 because they directly impact the value of the Affected Vehicles purchased or leased by  
27 Plaintiffs and Class members. Whether a manufacturer's products comply with  
28



1 federal and state clean air laws and emissions regulations, and whether that  
2 manufacturer tells the truth with respect to such compliance or non-compliance, are  
3 material concerns to a consumer, including with respect to the emissions certification  
4 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
5 members that they were purchasing *clean* diesel vehicles, and certification testing  
6 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
7 process thoroughly.

8 177. Volkswagen actively concealed and/or suppressed these material facts, in  
9 whole or in part, to pad and protect its profits and to avoid the perception that its  
10 vehicles did not or could not comply with federal and state laws governing clean air  
11 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
12 money, and it did so at the expense of Plaintiffs and Class members.

13 178. On information and belief, Volkswagen has still not made full and  
14 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
15 concealing material information regarding the emissions qualities of its vehicles and  
16 its emissions scheme.

17 179. Plaintiffs and Class members were unaware of the omitted material facts  
18 referenced herein, and they would not have acted as they did if they had known of the  
19 concealed and/or suppressed facts, in that they would not have purchased purportedly  
20 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
21 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
22 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
23 were justified. Volkswagen was in exclusive control of the material facts, and such  
24 facts were not known to the public, Plaintiffs, or Class members.

25 180. Because of the concealment and/or suppression of the facts, Plaintiffs and  
26 Class members have sustained damage because they own vehicles that are diminished  
27 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
28

1 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
2 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
3 branded vehicles and the serious issues engendered by Volkswagen's corporate  
4 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
5 scheme, and the company's callous disregard for compliance with applicable federal  
6 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
7 new or previously owned vehicles would have paid less for their vehicles or would not  
8 have purchased or leased them at all.

9 181. The value of Plaintiffs' and Class members' vehicles has diminished as a  
10 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
11 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
12 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
13 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
14 value for the vehicles. In addition, Class members are entitled to damages for loss of  
15 use, costs of additional fuel, costs of unused warranties, and other damages to be  
16 proved at trial.

17 182. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
18 damages in an amount to be proven at trial.

19 183. Volkswagen's acts were done wantonly, maliciously, oppressively,  
20 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
21 members' rights and the representations that Volkswagen made to them, in order to  
22 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
23 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
24 such conduct in the future, which amount is to be determined according to proof.  
25  
26  
27  
28

**COUNT III  
BREACH OF CONTRACT  
(BASED ON ALABAMA LAW)**

184. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

185. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Alabama Subclass.

186. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Alabama Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Alabama Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Alabama Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

187. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Alabama Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

188. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Alabama Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**C. Claims on Behalf of the Alaska Subclass**

**COUNT I  
VIOLATION OF THE ALASKA UNFAIR TRADE  
PRACTICES AND CONSUMER PROTECTION ACT  
(ALASKA STAT. ANN. § 45.50.471, *et seq.*)**

189. Plaintiff Michael Bozine ("Plaintiff," for purposes of all Alaska Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

190. Plaintiff intends to assert a claim under the Alaska Unfair Trade Practices And Consumer Protection Act ("Alaska CPA") which proscribes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(8) advertising goods or services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged." ALASKA STAT. ANN. § 45.50.471. Plaintiffs will make a demand in satisfaction of ALASKA STAT. § 45.50.535, and may amend this Complaint to assert claims under the CPA once the

1 required notice period has elapsed. This paragraph is included for purposes of notice  
2 only and is not intended to actually assert a claim under the CPA.

3 **COUNT II**  
4 **FRAUD BY CONCEALMENT**

5 191. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 192. This claim is brought on behalf of the Alaska Subclass.

8 193. Volkswagen intentionally concealed and suppressed material facts  
9 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
10 notwithstanding references in the very model names of the subject vehicles as “Clean  
11 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
12 secret scheme to evade federal and state vehicle emissions standards by installing  
13 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
14 which contributes to the creation of ozone and smog. The software installed on the  
15 vehicles at issue was designed nefariously to kick-in during emissions certification  
16 testing, such that the vehicles would show far lower emissions than when actually  
17 operating on the road. The result was what Volkswagen intended: vehicles passed  
18 emissions certifications by way of deliberately induced false readings. Reportedly,  
19 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
20 vehicles at up to 40 times applicable standards.

21 194. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
22 representations. They had no way of knowing that Volkswagen’s representations were  
23 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
24 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
25 not, unravel Volkswagen’s deception on their own.

26 195. Volkswagen concealed and suppressed material facts concerning what is  
27 evidently the true culture of Volkswagen—one characterized by an emphasis on  
28 profits and sales above compliance with federal and state clean air laws, and emissions

1 regulations that are meant to protect the public and consumers. It also emphasized  
2 profits and sales over the trust that Plaintiffs and Class members placed in its  
3 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
4 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
5 intentional manipulation of the system. That’s just a whole other level of not only  
6 lying to the government, but also lying to your consumer. People buy diesel cars from  
7 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
8 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
9 want to be spewing noxious gases into the environment.”

10 196. Necessarily, Volkswagen also took steps to ensure that its employees did  
11 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
12 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
13 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
14 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
15 law, including federal and state clean air laws and emissions regulations, and that its  
16 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
17 representations were material to consumers, both because they concerned the quality  
18 of the Affected Vehicles, including their compliance with applicable federal and state  
19 laws and regulations regarding clean air and emissions, and also because the  
20 representations played a significant role in the value of the vehicles. As Volkswagen  
21 well knew, its customers, including Plaintiffs and Class members, highly valued that  
22 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
23 accordingly.

24 197. Volkswagen had a duty to disclose its emissions scheme because  
25 knowledge of the scheme and its details were known and/or accessible only to  
26 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
27 maintenance of its scheme, and because Volkswagen knew the facts were not known  
28

1 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
2 duty to disclose because it made general affirmative representations about the qualities  
3 of its vehicles with respect to emissions standards, starting with references to them as  
4 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
5 and incomplete without the disclosure of the additional facts set forth above regarding  
6 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
7 respect to compliance with federal and state clean air laws and emissions regulations,  
8 and its actual practices with respect to the vehicles at issue. Having volunteered to  
9 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
10 partial truth, but the entire truth. These omitted and concealed facts were material  
11 because they directly impact the value of the Affected Vehicles purchased or leased by  
12 Plaintiffs and Class members. Whether a manufacturer's products comply with  
13 federal and state clean air laws and emissions regulations, and whether that  
14 manufacturer tells the truth with respect to such compliance or non-compliance, are  
15 material concerns to a consumer, including with respect to the emissions certification  
16 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
17 members that they were purchasing *clean* diesel vehicles, and certification testing  
18 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
19 process thoroughly.

20 198. Volkswagen actively concealed and/or suppressed these material facts, in  
21 whole or in part, to pad and protect its profits and to avoid the perception that its  
22 vehicles did not or could not comply with federal and state laws governing clean air  
23 and emissions, which perception would hurt the brand's image and cost Volkswagen  
24 money, and it did so at the expense of Plaintiffs and Class members.

25 199. On information and belief, Volkswagen has still not made full and  
26 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
27  
28



1 concealing material information regarding the emissions qualities of its vehicles and  
2 its emissions scheme.

3 200. Plaintiffs and Class members were unaware of the omitted material facts  
4 referenced herein, and they would not have acted as they did if they had known of the  
5 concealed and/or suppressed facts, in that they would not have purchased purportedly  
6 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
7 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
8 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
9 were justified. Volkswagen was in exclusive control of the material facts, and such  
10 facts were not known to the public, Plaintiffs, or Class members.

11 201. Because of the concealment and/or suppression of the facts, Plaintiffs and  
12 Class members have sustained damage because they own vehicles that are diminished  
13 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
14 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
15 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
16 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
17 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
18 scheme, and the company’s callous disregard for compliance with applicable federal  
19 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
20 new or previously owned vehicles would have paid less for their vehicles or would not  
21 have purchased or leased them at all.

22 202. The value of Plaintiffs’ and Class members’ vehicles has diminished as a  
23 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
24 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
25 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
26 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
27 value for the vehicles. In addition, Class members are entitled to damages for loss of  
28

1 use, costs of additional fuel, costs of unused warranties, and other damages to be  
2 proved at trial.

3 203. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
4 damages in an amount to be proven at trial.

5 204. Volkswagen's acts were done wantonly, maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
7 members' rights and the representations that Volkswagen made to them, in order to  
8 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
9 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
10 such conduct in the future, which amount is to be determined according to proof.

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
**(BASED ON ALASKA LAW)**

13 205. Plaintiff incorporates by reference all preceding allegations as though  
14 fully set forth herein.

15 206. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
16 owned vehicle purchasers in the Alaska Subclass.

17 207. Volkswagen's misrepresentations and omissions alleged herein, including  
18 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
19 defect and/or defective design as alleged herein, caused Plaintiff and the other Alaska  
20 Subclass members to make their purchases or leases of their Affected Vehicles.  
21 Absent those misrepresentations and omissions, Plaintiff and the other Alaska  
22 Subclass members would not have purchased or leased these Affected Vehicles, would  
23 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
24 would have purchased or leased less expensive alternative vehicles that did not contain  
25 the CleanDiesel engine system and which were not marketed as including such a  
26 system. Accordingly, Plaintiff and the other Alaska Subclass members overpaid for  
27 their Affected Vehicles and did not receive the benefit of their bargain.  
28

208. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Alaska Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

209. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Alaska Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**D. Claims Brought on Behalf of the Arizona Subclass**

**COUNT I  
VIOLATIONS OF THE CONSUMER FRAUD ACT  
(ARIZ. REV. STAT. §§ 44-1521, *et seq.*)**

210. Plaintiff Clifford Broussard ("Plaintiff," for purposes of all Arizona Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

211. Plaintiff brings this Count on behalf of the Arizona Subclass.

212. Plaintiff and Volkswagen are each "persons" as defined by ARIZ. REV. STAT. § 44-1521(6). The Affected Vehicles are "merchandise" as defined by ARIZ. REV. STAT. § 44-1521(5).

213. The Arizona Consumer Fraud Act proscribes "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or

1 not any person has in fact been misled, deceived or damaged thereby.” ARIZ. REV.  
2 STAT. § 44-1522(A).

3 214. By failing to disclose and actively concealing that the CleanDiesel engine  
4 systems were not EPA-compliant and used a “defeat device” in the Affected Vehicles,  
5 Volkswagen engaged in deceptive business practices prohibited by the Arizona  
6 Consumer Fraud Act, ARIZ. REV. STAT. § 44-1522(A), including (1) representing that  
7 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not  
8 have, (2) representing that Affected Vehicles are of a particular standard, quality, and  
9 grade when they are not, (3) advertising Affected Vehicles with the intent not to sell  
10 them as advertised, and (4) engaging in acts or practices which are otherwise unfair,  
11 misleading, false, or deceptive to the consumer.

12 215. As alleged above, Volkswagen made numerous material statements about  
13 the benefits and characteristics of the CleanDiesel system that were either false or  
14 misleading. Each of these statements contributed to the deceptive context of  
15 Volkswagen’s unlawful advertising and representations as a whole.

16 216. Volkswagen knew that the CleanDiesel engine systems in the Affected  
17 Vehicles were defectively designed or manufactured, did not comply with EPA  
18 regulations, used a “defeat device,” and were not suitable for their intended use.  
19 Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a  
20 duty to do so.

21 217. Volkswagen owed Plaintiff a duty to disclose the defective nature of the  
22 CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- 23 i) Possessed exclusive knowledge of the defects rendering the  
24 Affected Vehicles illegal under EPA regulations;
- 25 ii) Intentionally concealed the defects associated with CleanDiesel  
26 engine systems through its deceptive marketing campaigns and use  
27  
28

1 of the “defeat device” that it designed to hide the defects in the  
2 CleanDiesel engine system; and/or

3 iii) Made incomplete representations about the characteristics and  
4 performance of the CleanDiesel engine system generally, while  
5 purposefully withholding material facts from Plaintiff that  
6 contradicted these representations.

7 218. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
8 in fact deceive reasonable consumers, including Plaintiff, about the true performance  
9 and characteristics of the CleanDiesel engine system in Affected Vehicles.

10 219. As a result of its violations of the Arizona Consumer Fraud Act detailed  
11 above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will  
12 continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class  
13 period has owned or leased, an Affected Vehicle that is defective. Defects associated  
14 with the CleanDiesel engine system have caused the value of Affected Vehicles to  
15 decrease.

16 220. Plaintiff and the Class sustained damages as a result of the Volkswagen’s  
17 unlawful acts and are, therefore, entitled to damages and other relief as provided under  
18 the Arizona Consumer Fraud Act.

19 221. Plaintiff also seeks court costs and attorneys’ fees as a result of  
20 Volkswagen’s violation of the Arizona Consumer Fraud Act as provided in ARIZ. REV.  
21 STAT. § 12-341.01.

22 **COUNT II**  
23 **BREACH OF CONTRACT**  
(Based on Arizona Law)

24 222. Plaintiff incorporates by reference all preceding allegations as though  
25 fully set forth herein.

26 223. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
27 owned vehicle purchasers in the Arizona Subclass.  
28

1           224. Volkswagen's misrepresentations and omissions alleged herein, including  
2 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
3 defect and/or defective design as alleged herein, caused Plaintiff and the other Arizona  
4 Subclass members to make their purchases or leases of their Affected Vehicles.  
5 Absent those misrepresentations and omissions, Plaintiff and the other Arizona  
6 Subclass members would not have purchased or leased these Affected Vehicles, would  
7 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
8 would have purchased or leased less expensive alternative vehicles that did not contain  
9 the CleanDiesel engine system and which were not marketed as including such a  
10 system. Accordingly, Plaintiff and the other Arizona Subclass members overpaid for  
11 their Affected Vehicles and did not receive the benefit of their bargain.

12           225. Each and every sale or lease of an Affected Vehicle by an authorized  
13 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
14 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
15 other Arizona Subclass members defective Affected Vehicles and by misrepresenting  
16 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
17 defective design, including information known to Volkswagen rendering each  
18 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
19 equipped with a CleanDiesel engine system.

20           226. As a direct and proximate result of Volkswagen's breach of contract,  
21 Plaintiff and the Arizona Subclass have been damaged in an amount to be proven at  
22 trial, which shall include, but is not limited to, all compensatory damages, incidental  
23 and consequential damages, and other damages allowed by law.

24                                   **COUNT III**  
25                                   **FRAUDULENT CONCEALMENT**  
  **(Based on Arizona Law)**

26           227. Plaintiff incorporates by reference all preceding allegations as though  
27 fully set forth herein.  
28

1           228. Plaintiff brings this Count on behalf of the Arizona Subclass.

2           229. Volkswagen intentionally concealed that the CleanDiesel engine systems  
3 were not EPA-compliant and used a “defeat device,” or acted with reckless disregard  
4 for the truth, and denied Plaintiff and the other Class members information that is  
5 highly relevant to their purchasing decision.

6           230. Volkswagen further affirmatively misrepresented to Plaintiff in  
7 advertising and other forms of communication, including standard and uniform  
8 material provided with each car, that the Affected Vehicles it was selling were new,  
9 had no significant defects, complied with EPA regulations and would perform and  
10 operate properly when driven in normal usage.

11           231. Volkswagen knew these representations were false when made.

12           232. The Affected Vehicles purchased or leased by Plaintiff and the other  
13 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
14 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
15 system, as alleged herein.

16           233. Volkswagen had a duty to disclose that these Affected Vehicles were  
17 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
18 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
19 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
20 other Class members relied on Volkswagen’s material representations that the  
21 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
22 and free from defects.

23           234. The aforementioned concealment was material because if it had been  
24 disclosed Plaintiff and the other Class members would not have bought or leased the  
25 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
26 they paid.



235. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

236. Plaintiff and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Affected Vehicles.

237. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

238. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages to the extent permitted under applicable law.

#### **E. Claims on Behalf of the Arkansas Subclass**

### **COUNT I VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT (ARK. CODE ANN. § 4-88-101, *ET SEQ.*)**

239. Plaintiff Victoria McClelland (“Plaintiff,” for purposes of all Arkansas Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

240. This claim is brought only on behalf of the Arkansas Subclass.

1           241. Volkswagen, Plaintiffs, and the Arkansas Subclass are “persons” within  
2 the meaning of Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), ARK.  
3 CODE ANN. § 4-88-102(5).

4           242. The Affected Vehicles are “goods” within the meaning of ARK. CODE  
5 ANN. § 4-88-102(4).

6           243. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade  
7 practices,” which include, but are not limited to, a list of enumerated items, including  
8 “[e]ngaging in any other unconscionable, false, or deceptive act or practice in  
9 business, commerce, or trade[.]” ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas  
10 DTPA also prohibits the following when utilized in connection with the sale or  
11 advertisement of any goods: “(1) The act, use, or employment by any person of any  
12 deception, fraud, or false pretense; or (2) The concealment, suppression, or omission  
13 of any material fact with intent that others rely upon the concealment, suppression, or  
14 omission.” ARK. CODE ANN. § 4-88-108. Volkswagen violated the Arkansas DTPA  
15 and engaged in deceptive and unconscionable trade practices by, among other things,  
16 fraudulently installing the “defeat device” to make it appear that its CleanDiesel  
17 engine systems complied with EPA regulations and otherwise engaging in activities  
18 with a tendency or capacity to deceive.

19           244. Volkswagen also engaged in unlawful trade practices by employing  
20 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
21 suppression or omission of any material fact with intent that others rely upon such  
22 concealment, suppression or omission, in connection with the sale of Affected  
23 Vehicles.

24           245. Volkswagen’s actions as set forth above occurred in the conduct of trade  
25 or commerce.

1           246. Volkswagen has known of the true characteristics of its CleanDiesel  
2 engine systems for at least six years, but concealed all of that information until  
3 recently.

4           247. Volkswagen was also aware that it valued profits over environmental  
5 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
6 distributing vehicles throughout the United States that did not comply with EPA  
7 regulations. Volkswagen concealed this information as well.

8           248. By failing to disclose and by actively concealing the “defeat device” and  
9 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
10 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
11 by presenting itself as a reputable manufacturer that valued safety, environmental  
12 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
13 Volkswagen engaged in deceptive and unconscionable business practices in violation  
14 of the Arkansas DTPA.

15           249. In the course of Volkswagen’s business, it willfully failed to disclose and  
16 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
17 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
18 compounded the deception by repeatedly asserting that the Affected Vehicles were  
19 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
20 be a reputable manufacturer that valued safety, environmental cleanliness and  
21 efficiency, and stood behind its vehicles once they are on the road.

22           250. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
23 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
24 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
25 Audi brands, the devaluing of safety, integrity and lawfulness at Volkswagen, and the  
26 true value of the Affected Vehicles.

1           251. Volkswagen intentionally and knowingly misrepresented material facts  
2 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Arkansas  
3 Subclass.

4           252. Volkswagen knew or should have known that its conduct violated the  
5 Arkansas DTPA.

6           253. As alleged above, Volkswagen made material statements about the safety,  
7 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
8 and Audi brands that were either false or misleading.

9           254. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
10 efficiency and reliability of the Affected Vehicles and the devaluing of safety,  
11 integrity and lawfulness at Volkswagen, because Volkswagen:

- 12           a. Possessed exclusive knowledge that it valued profits  
13 over environmental cleanliness, efficiency, and  
14 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 15           b. Intentionally concealed the foregoing from Plaintiffs;  
16 and/or
- 17           c. Made incomplete representations about the safety,  
18 cleanliness, efficiency and reliability of the Affected  
19 Vehicles generally, and the “defeat device” and true  
nature of the CleanDiesel engine system in particular,  
while purposefully withholding material facts from  
Plaintiffs that contradicted these representations.

20           255. Because Volkswagen fraudulently concealed the “defeat device” and the  
21 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
22 of negative publicity once the use of the “defeat device” and true characteristics of the  
23 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
24 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
25 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
26 would be.

1           256. Volkswagen's fraudulent use of the "defeat device" and its concealment  
2 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
3 and the Arkansas Subclass. A vehicle made by a reputable manufacturer of  
4 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
5 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
6 the amount its cars pollutes rather than make environmentally friendly vehicles.

7           257. Plaintiffs and the Arkansas Subclass suffered ascertainable loss caused by  
8 Volkswagen's misrepresentations and its concealment of and failure to disclose  
9 material information. Class members who purchased Affected Vehicles either would  
10 have paid less for their vehicles or would not have purchased or leased them at all.

11           258. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
12 to refrain from unfair and deceptive acts or practices under the Arkansas DTPA. All  
13 owners of Affected Vehicles suffered ascertainable loss in the form of diminished  
14 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
15 practices made in the course of Volkswagen's business.

16           259. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
17 to the general public. Volkswagen's unlawful acts and practices complained of herein  
18 affect the public interest.

19           260. As a direct and proximate result of Volkswagen's violations of the  
20 Arkansas DTPA, Plaintiffs and the Arkansas Subclass have suffered injury-in-fact  
21 and/or actual damage.

22           261. Plaintiffs and the Arkansas Subclass seek monetary relief against  
23 Volkswagen in an amount to be determined at trial. Plaintiffs and the Arkansas  
24 Subclass also seek punitive damages because Volkswagen acted wantonly in causing  
25 the injury or with such a conscious indifference to the consequences that malice may  
26 be inferred.

262. Plaintiffs also seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arkansas DTPA.

## COUNT II FRAUD BY CONCEALMENT

263. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

264. This claim is brought on behalf of the Aarkansas Subclass.

265. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

266. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

267. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on

1 profits and sales above compliance with federal and state clean air laws, and emissions  
2 regulations that are meant to protect the public and consumers. It also emphasized  
3 profits and sales over the trust that Plaintiffs and Class members placed in its  
4 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
5 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
6 intentional manipulation of the system. That’s just a whole other level of not only  
7 lying to the government, but also lying to your consumer. People buy diesel cars from  
8 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
9 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
10 want to be spewing noxious gases into the environment.”

11 268. Necessarily, Volkswagen also took steps to ensure that its employees did  
12 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
13 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
14 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
15 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
16 law, including federal and state clean air laws and emissions regulations, and that its  
17 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
18 representations were material to consumers, both because they concerned the quality  
19 of the Affected Vehicles, including their compliance with applicable federal and state  
20 laws and regulations regarding clean air and emissions, and also because the  
21 representations played a significant role in the value of the vehicles. As Volkswagen  
22 well knew, its customers, including Plaintiffs and Class members, highly valued that  
23 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
24 accordingly.

25 269. Volkswagen had a duty to disclose its emissions scheme because  
26 knowledge of the scheme and its details were known and/or accessible only to  
27 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
28



1 maintenance of its scheme, and because Volkswagen knew the facts were not known  
2 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
3 duty to disclose because it made general affirmative representations about the qualities  
4 of its vehicles with respect to emissions standards, starting with references to them as  
5 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
6 and incomplete without the disclosure of the additional facts set forth above regarding  
7 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
8 respect to compliance with federal and state clean air laws and emissions regulations,  
9 and its actual practices with respect to the vehicles at issue. Having volunteered to  
10 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
11 partial truth, but the entire truth. These omitted and concealed facts were material  
12 because they directly impact the value of the Affected Vehicles purchased or leased by  
13 Plaintiffs and Class members. Whether a manufacturer's products comply with  
14 federal and state clean air laws and emissions regulations, and whether that  
15 manufacturer tells the truth with respect to such compliance or non-compliance, are  
16 material concerns to a consumer, including with respect to the emissions certification  
17 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
18 members that they were purchasing *clean* diesel vehicles, and certification testing  
19 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
20 process thoroughly.

21 270. Volkswagen actively concealed and/or suppressed these material facts, in  
22 whole or in part, to pad and protect its profits and to avoid the perception that its  
23 vehicles did not or could not comply with federal and state laws governing clean air  
24 and emissions, which perception would hurt the brand's image and cost Volkswagen  
25 money, and it did so at the expense of Plaintiffs and Class members.

26 271. On information and belief, Volkswagen has still not made full and  
27 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
28

1 concealing material information regarding the emissions qualities of its vehicles and  
2 its emissions scheme.

3 272. Plaintiffs and Class members were unaware of the omitted material facts  
4 referenced herein, and they would not have acted as they did if they had known of the  
5 concealed and/or suppressed facts, in that they would not have purchased purportedly  
6 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
7 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
8 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
9 were justified. Volkswagen was in exclusive control of the material facts, and such  
10 facts were not known to the public, Plaintiffs, or Class members.

11 273. Because of the concealment and/or suppression of the facts, Plaintiffs and  
12 Class members have sustained damage because they own vehicles that are diminished  
13 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
14 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
15 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
16 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
17 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
18 scheme, and the company’s callous disregard for compliance with applicable federal  
19 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
20 new or previously owned vehicles would have paid less for their vehicles or would not  
21 have purchased or leased them at all.

22 274. The value of Plaintiffs’ and Class members’ vehicles has diminished as a  
23 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
24 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
25 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
26 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
27 value for the vehicles. In addition, Class members are entitled to damages for loss of  
28

1 use, costs of additional fuel, costs of unused warranties, and other damages to be  
2 proved at trial.

3 275. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
4 damages in an amount to be proven at trial.

5 276. Volkswagen's acts were done wantonly, maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
7 members' rights and the representations that Volkswagen made to them, in order to  
8 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
9 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
10 such conduct in the future, which amount is to be determined according to proof.

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
**(BASED ON ARKANSAS LAW)**

13 277. Plaintiff incorporates by reference all preceding allegations as though  
14 fully set forth herein.

15 278. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
16 owned vehicle purchasers in the Arkansas Subclass.

17 279. Volkswagen's misrepresentations and omissions alleged herein, including  
18 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
19 defect and/or defective design as alleged herein, caused Plaintiff and the other  
20 Arkansas Subclass members to make their purchases or leases of their Affected  
21 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
22 Arkansas Subclass members would not have purchased or leased these Affected  
23 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
24 they paid, and/or would have purchased or leased less expensive alternative vehicles  
25 that did not contain the CleanDiesel engine system and which were not marketed as  
26 including such a system. Accordingly, Plaintiff and the other Arkansas Subclass  
27  
28

1 members overpaid for their Affected Vehicles and did not receive the benefit of their  
2 bargain.

3 280. Each and every sale or lease of an Affected Vehicle by an authorized  
4 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
5 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
6 other Arkansas Subclass members defective Affected Vehicles and by misrepresenting  
7 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
8 defective design, including information known to Volkswagen rendering each  
9 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
10 equipped with a CleanDiesel engine system.

11 281. As a direct and proximate result of Volkswagen's breach of contract,  
12 Plaintiff and the Arkansas Subclass have been damaged in an amount to be proven at  
13 trial, which shall include, but is not limited to, all compensatory damages, incidental  
14 and consequential damages, and other damages allowed by law.

15 **F. Claims Brought on Behalf of the California Subclass**

16 **COUNT I**  
17 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
**(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

18 282. Plaintiffs Jess Hill, Kevin Jentes and Malia Sias ("Plaintiffs," for  
19 purposes of all California Subclass Counts) incorporate by reference all preceding  
20 allegations as though fully set forth herein.

21 283. Plaintiffs bring this Count on behalf of the California Subclass.

22 284. California's Unfair Competition Law ("UCL"), CAL. BUS. & PROF. CODE  
23 §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful,  
24 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
25 misleading advertising."

26 285. Volkswagen's conduct, as described herein, was and is in violation of the  
27 UCL. Volkswagen's conduct violates the UCL in at least the following ways:  
28

- i. By knowingly and intentionally concealing from Plaintiffs and the other California Subclass members that the Affected Vehicles suffer from a design defect while obtaining money from Plaintiffs and the Class;
- ii. By marketing Affected Vehicles as possessing functional and defect-free, EPA-compliant CleanDiesel engine systems;
- iii. By purposefully installing an illegal “defeat device” in the Affected Vehicles to fraudulently obtain EPA certification and cause Affected Vehicles to pass emissions tests when in truth and fact they did not pass such tests;
- iv. By violating federal laws, including the Clean Air Act; and
- v. By violating other California laws, including California laws governing vehicle emissions and emission testing requirements.

286. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiffs and the other California Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other California Subclass members would not have purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain CleanDiesel engine systems that failed to comply with EPA and California emissions standards.

287. Accordingly, Plaintiffs and the other California Subclass members have suffered injury in fact including lost money or property as a result of Volkswagen’s misrepresentations and omissions.

288. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Volkswagen under CAL. BUS. & PROF. CODE § 17200.

289. Plaintiffs requests that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and CAL. BUS. & PROF. CODE § 3345; and for such other relief set forth below.

**COUNT II**  
**VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**  
**(CAL. BUS. & PROF. CODE §§ 1750, *et seq.*)**

290. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

291. Plaintiffs bring this Count on behalf of the California Subclass.

292. California's Consumers Legal Remedies Act ("CLRA"), Cal. Bus. & Prof. Code §§ 1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

293. The Affected Vehicles are "goods" as defined in Cal. Bus. & Prof. Code § 1761(a).

294. Plaintiffs and the other California Subclass members are "consumers" as defined in Cal. Bus. & Prof. Code § 1761(d), and Plaintiffs, the other California Subclass members, and Volkswagen are "persons" as defined in Cal. Bus. & Prof. Code § 1761(c).

295. As alleged above, Volkswagen made numerous representations concerning the benefits, efficiency, performance and safety features of CleanDiesel engine systems that were misleading.

296. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other California Subclass members were deceived by Volkswagen's failure to disclose that

1 the Affected Vehicles were equipped with defective CleanDiesel engine systems that  
2 failed EPA and California emissions standards.

3 297. Volkswagen's conduct, as described hereinabove, was and is in violation  
4 of the CLRA. Volkswagen's conduct violates at least the following enumerated  
5 CLRA provisions:

6 i. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or  
7 certification of goods;

8 ii. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by  
9 another;

10 iii. Cal. Civ. Code § 1770(a)(5): Representing that goods have  
11 sponsorship, approval, characteristics, uses, benefits, or quantities which they  
12 do not have;

13 iv. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a  
14 particular standard, quality, or grade, if they are of another;

15 v. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell  
16 them as advertised; and

17 vi. Cal. Civ. Code § 1770(a)(16): Representing that goods have been  
18 supplied in accordance with a previous representation when they have not.

19 298. Plaintiffs and the other California Subclass members have suffered injury  
20 in fact and actual damages resulting from Volkswagen's material omissions and  
21 misrepresentations because they paid an inflated purchase or lease price for the  
22 Affected Vehicles and because they stand to pay additional fuel costs if and when their  
23 Affected Vehicles are made to comply with emissions standards.

24 299. Volkswagen knew, should have known, or was reckless in not knowing  
25 of the defective design and/or manufacture of the CleanDiesel engine systems, and  
26 that the Affected Vehicles were not suitable for their intended use.  
27  
28





1           306. Volkswagen caused to be made or disseminated through California and  
2 the United States, through advertising, marketing and other publications, statements  
3 that were untrue or misleading, and which were known, or which by the exercise of  
4 reasonable care should have been known to Volkswagen, to be untrue and misleading  
5 to consumers, including Plaintiffs and the other Class members.

6           307. Volkswagen has violated § 17500 because the misrepresentations and  
7 omissions regarding the safety, reliability, and functionality of Affected Vehicles as  
8 set forth in this Complaint were material and likely to deceive a reasonable consumer.

9           308. Plaintiffs and the other Class members have suffered an injury in fact,  
10 including the loss of money or property, as a result of Volkswagen's unfair, unlawful,  
11 and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiffs  
12 and the other Class members relied on the misrepresentations and/or omissions of  
13 Volkswagen with respect to the safety, performance and reliability of the Affected  
14 Vehicles. Volkswagen's representations turned out not to be true because the Affected  
15 Vehicles are distributed with faulty and defective CleanDiesel engine systems,  
16 rendering certain safety and emissions functions inoperative. Had Plaintiffs and the  
17 other Class members known this, they would not have purchased or leased their  
18 Affected Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other  
19 Class members overpaid for their Affected Vehicles and did not receive the benefit of  
20 their bargain.

21           309. All of the wrongful conduct alleged herein occurred, and continues to  
22 occur, in the conduct of Volkswagen's business. Volkswagen's wrongful conduct is  
23 part of a pattern or generalized course of conduct that is still perpetuated and repeated,  
24 both in the State of California and nationwide.

25           310. Plaintiffs, individually and on behalf of the other Class members, requests  
26 that this Court enter such orders or judgments as may be necessary to enjoin  
27 Volkswagen from continuing their unfair, unlawful, and/or deceptive practices and to  
28

1 restore to Plaintiffs and the other Class members any money Volkswagen acquired by  
2 unfair competition, including restitution and/or restitutionary disgorgement, and for  
3 such other relief set forth below.

4 **COUNT IV**  
5 **BREACH OF CONTRACT**  
6 **(Based on California Law)**

7 311. Plaintiffs incorporate by reference all preceding allegations as though  
8 fully set forth herein.

9 312. Plaintiffs bring this Count on behalf of new vehicle or certified pre-  
10 owned vehicle purchasers in the California Subclass.

11 313. Volkswagen's misrepresentations and omissions alleged herein, including  
12 Volkswagen's failure to disclose the existence of the "defeat device" and/or defective  
13 design as alleged herein, caused Plaintiffs and the other California Subclass members  
14 to make their purchases or leases of their Affected Vehicles. Absent those  
15 misrepresentations and omissions, Plaintiffs and the other California Subclass  
16 members would not have purchased or leased these Affected Vehicles, would not have  
17 purchased or leased these Affected Vehicles at the prices they paid, and/or would have  
18 purchased or leased less expensive alternative vehicles that did not contain the  
19 CleanDiesel engine system and the "defeat device." Accordingly, Plaintiffs and the  
20 other California Subclass members overpaid for their Affected Vehicles and did not  
21 receive the benefit of their bargain.

22 314. Each and every sale or lease of an Affected Vehicle by an authorized  
23 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
24 lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the  
25 other California Subclass members defective Affected Vehicles and by  
26 misrepresenting or failing to disclose the existence of the "defeat device" and/or  
27 defective design, including information known to Volkswagen rendering each  
28

1 Affected Vehicle less safe and emissions compliant, and thus less valuable, than  
2 vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

3 315. As a direct and proximate result of Volkswagen’s breach of contract,  
4 Plaintiffs and the California Subclass have been damaged in an amount to be proven at  
5 trial, which shall include, but is not limited to, all compensatory damages, incidental  
6 and consequential damages, and other damages allowed by law.

7 **COUNT V**  
8 **FRAUD BY CONCEALMENT**  
9 **(Based on California Law)**

10 316. Plaintiffs reallege and incorporate by reference all paragraphs as though  
11 fully set forth herein.

12 317. This claim is brought on behalf of California Subclass members.

13 318. Volkswagen intentionally concealed and suppressed material facts  
14 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
15 notwithstanding references in the very model names of the subject vehicles as  
16 “CleanDiesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen  
17 engaged in a secret scheme to evade federal and state vehicle emissions standards by  
18 installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen  
19 oxide, which contributes to the creation of ozone and smog. The software installed on  
20 the vehicles at issue was designed nefariously to kick-in during emissions certification  
21 testing, such that the vehicles would show far lower emissions than when actually  
22 operating on the road. The result was what Volkswagen intended: vehicles passed  
23 emissions certifications by way of deliberately induced false readings. Reportedly,  
24 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
25 vehicles at up to 40 times applicable standards.

26 319. Plaintiffs and California Subclass members reasonably relied upon  
27 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s  
28 representations were false and gravely misleading. As alleged herein, Volkswagen

1 employed extremely sophisticated methods of deception. Plaintiffs and California  
2 Subclass members did not, and could not, unravel Volkswagen's deception on their  
3 own.

4 320. Volkswagen concealed and suppressed material facts concerning what is  
5 evidently the true culture of Volkswagen – one characterized by an emphasis on  
6 profits and sales above compliance with federal and state clean air laws, and emissions  
7 regulations that are meant to protect the public and consumers. It also emphasized  
8 profits and sales over the trust that Plaintiffs and California Subclass members placed  
9 in its representations. As one customer, Priya Shah, put it in a quotation cited by the  
10 *Los Angeles Times* in a September 15, 2015 article, "It's just a blatant disregard and  
11 intentional manipulation of the system. That's just a whole other level of not only  
12 lying to the government, but also lying to your consumer. People buy diesel cars from  
13 Volkswagen because they feel they are clean diesel cars." As Ms. Shah put it, "I don't  
14 want to be spewing noxious gases into the environment."

15 321. Necessarily, Volkswagen also took steps to ensure that its employees did  
16 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
17 California Subclass Members. Volkswagen did so in order to boost the reputations of  
18 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
19 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
20 with applicable law, including federal and state clean air laws and emissions  
21 regulations, and that its vehicles likewise comply with applicable law and regulations.  
22 Volkswagen's false representations were material to consumers, both because they  
23 concerned the quality of the Affected Vehicles, including their compliance with  
24 applicable federal and state laws and regulations regarding clean air and emissions,  
25 and also because the representations played a significant role in the value of the  
26 vehicles. As Volkswagen well knew, its customers, including Plaintiffs and California  
27  
28

1 Subclass Members, highly valued that the vehicles they were purchasing or leasing  
2 were *clean* diesel cars, and they paid accordingly.

3 322. Volkswagen had a duty to disclose the emissions scheme it engaged in  
4 with respect to the Affected Vehicles because knowledge of the scheme and its details  
5 were known and/or accessible only to Volkswagen, because Volkswagen had  
6 exclusive knowledge as to implementation and maintenance of its scheme, and  
7 because Volkswagen knew the facts were not known to or reasonably discoverable by  
8 Plaintiffs or California Subclass Members. Volkswagen also had a duty to disclose  
9 because it made general affirmative representations about the qualities of its vehicles  
10 with respect to emissions standards, starting with references to them as *clean* diesel  
11 cars, or cars with *clean* diesel engines, which were misleading, deceptive, and  
12 incomplete without the disclosure of the additional facts set forth above regarding its  
13 emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
14 respect to compliance with federal and state clean air laws and emissions regulations,  
15 and its actual practices with respect to the vehicles at issue. Having volunteered to  
16 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
17 partial truth, but the entire truth. These omitted and concealed facts were material  
18 because they directly impact the value of the Affected Vehicles purchased or leased by  
19 Plaintiffs and California Subclass members. Whether a manufacturer's products  
20 comply with federal and state clean air laws and emissions regulations, and whether  
21 that manufacturer tells the truth with respect to such compliance or non-compliance,  
22 are material concerns to a consumer, including with respect to the emissions  
23 certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and  
24 California Subclass members that they were purchasing *clean* diesel vehicles, and  
25 certification testing appeared to confirm this – except that, secretly, Volkswagen had  
26 subverted the testing process thoroughly.

1           323. Volkswagen actively concealed and/or suppressed these material facts, in  
2 whole or in part, to pad and protect its profits and to avoid the perception that its  
3 vehicles did not or could not comply with federal and state laws governing clean air  
4 and emissions, which perception would hurt the brand's image and cost Volkswagen  
5 money, and it did so at the expense of Plaintiffs and California Subclass members.

6           324. On information and belief, Volkswagen has still not made full and  
7 adequate disclosures, and continues to defraud Plaintiffs and California Subclass  
8 members by concealing material information regarding the emission qualities of its  
9 vehicles and its emissions scheme.

10           325. Plaintiffs and California Subclass members were unaware of the omitted  
11 material facts referenced herein, and they would not have acted as they did if they had  
12 known of the concealed and/or suppressed facts, in that they would not have  
13 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
14 not have continued to drive their heavily polluting vehicles, or would have taken other  
15 affirmative steps in light of the information concealed from them. Plaintiffs' and  
16 California Subclass Members' actions were justified. Volkswagen was in exclusive  
17 control of the material facts, and such facts were not known to the public, Plaintiffs, or  
18 California Subclass Members.

19           326. Because of the concealment and/or suppression of the facts, Plaintiffs and  
20 California Subclass members have sustained damage because they own vehicles that  
21 are diminished in value as a result of Volkswagen's concealment of the true quality  
22 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
23 the actual emission qualities and quantities of millions of Volkswagen- and Audi-  
24 branded vehicles and the serious issues engendered by Volkswagen's corporate  
25 policies. Had Plaintiffs and California Subclass members been aware of  
26 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
27 with applicable federal and state laws and regulations, Plaintiffs and California  
28



1 Subclass members who purchased or leased new or previously owned vehicles would  
2 have paid less for their vehicles or would not have purchased or leased them at all.

3 327. The value of Plaintiffs' and California Subclass Members' vehicles has  
4 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
5 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
6 to Plaintiffs' and California Subclass members' vehicles and made any reasonable  
7 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
8 otherwise would have been fair market value for the vehicles. In addition, Class  
9 members are entitled to damages for loss of use, costs of additional fuel, costs of  
10 unused warranties, and other damages to be proved at trial.

11 328. Accordingly, Volkswagen is liable to Plaintiffs and California Subclass  
12 members for damages in an amount to be proven at trial.

13 329. Volkswagen's acts were done wantonly, maliciously, oppressively,  
14 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and  
15 California Subclass members' rights and the representations that Volkswagen made to  
16 them, in order to enrich Volkswagen. Volkswagen's conduct warrants an assessment  
17 of punitive damages in an amount sufficient to deter such conduct in the future, which  
18 amount is to be determined according to proof.

19 **G. Claims Brought on Behalf of the Colorado Subclass**

20 **COUNT I**  
21 **VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**  
(COLO. REV. STAT. §§ 6-1-101, *et seq.*)

22 330. Plaintiffs Jeremiah Holden and Hildegard Reiser, M.D. ("Plaintiffs," for  
23 purposes of all Colorado Subclass Counts) incorporate by reference all preceding  
24 allegations as though fully set forth herein.

25 331. Plaintiffs bring this Count on behalf of the Colorado Subclass.

26 332. Colorado's Consumer Protection Act (the "CCPA") prohibits a person  
27 from engaging in a "deceptive trade practice," which includes knowingly making "a  
28

1 false representation as to the source, sponsorship, approval, or certification of goods,”  
2 or “a false representation as to the characteristics, ingredients, uses, benefits,  
3 alterations, or quantities of goods.” COLO. REV. STAT. § 6-1-105(1)(b), (e). The  
4 CCPA further prohibits “represent[ing] that goods ... are of a particular standard,  
5 quality, or grade ... if he knows or should know that they are of another,” and  
6 “advertis[ing] goods ... with intent not to sell them as advertised.” COLO. REV. STAT.  
7 § 6-1-105(1)(g), (i).

8 333. Defendants are each a “person” under § 6-1-102(6) of the Colorado CPA,  
9 COL. REV. STAT. § 6-1-101, *et seq.*

10 334. Plaintiffs and Colorado Class members are “consumers” for the purpose  
11 of COL. REV. STAT. § 6-1-113(1)(a) who purchased or leased one or more Affected  
12 Vehicles.

13 335. In the course of Volkswagen’s business, it willfully misrepresented and  
14 failed to disclose, and actively concealed, that the CleanDiesel Engine System was  
15 non-EPA compliant, and the use of the “defeat device” in Affected Vehicles as  
16 described above. Accordingly, Volkswagen engaged in unlawful trade practices,  
17 including representing that Affected Vehicles have characteristics, uses, benefits, and  
18 qualities which they do not have; representing that Affected Vehicles are of a  
19 particular standard and quality when they are not; advertising Affected Vehicles with  
20 the intent not to sell them as advertised; and otherwise engaging in conduct likely to  
21 deceive.

22 336. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other  
23 Colorado Subclass members were deceived by Volkswagen’s failure to disclose that  
24 the Affected Vehicles were equipped with defective CleanDiesel engine systems that  
25 failed EPA and Colorado emissions standards.

26 337. Plaintiffs and Colorado Subclass members reasonably relied upon  
27 Volkswagen’s false misrepresentations. They had no way of knowing that  
28

1 Volkswagen's representations were false and gravely misleading. As alleged herein,  
2 Volkswagen engaged in extremely sophisticated methods of deception. Plaintiffs and  
3 Colorado Subclass members did not, and could not, unravel Volkswagen's deception  
4 on their own.

5 338. Volkswagen intentionally and knowingly misrepresented material facts  
6 regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Colorado  
7 Subclass.

8 339. Volkswagen knew or should have known that its conduct violated the  
9 Colorado CPA.

10 340. Volkswagen's actions as set forth above occurred in the conduct of trade  
11 or commerce.

12 341. Volkswagen's conduct proximately caused injuries to Plaintiffs and the  
13 other Class members.

14 342. Plaintiffs and the other Class members were injured as a result of  
15 Volkswagen's conduct in that Plaintiffs and the other Class members overpaid for  
16 their Affected Vehicles and did not receive the benefit of their bargain, and their  
17 Affected Vehicles have suffered a diminution in value. These injuries are the direct  
18 and natural consequence of Volkswagen's misrepresentations and omissions.

19 343. Pursuant to Col. Rev. Stat. § 6-1-113, Plaintiffs and the Colorado  
20 Subclass seek monetary relief against Volkswagen measured as the greater of (a)  
21 actual damages in an amount to be determined at trial and the discretionary trebling of  
22 such damages, or (b) statutory damages in the amount of \$500 for each Plaintiffs and  
23 each Colorado Subclass member.

24 344. Plaintiffs also seek an order enjoining Volkswagen's unfair, unlawful,  
25 and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and  
26 proper relief available under the Colorado CPA.

**COUNT II**  
**STRICT PRODUCT LIABILITY**  
**(Based on Colorado Law)**

345. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

346. Plaintiffs bring this Count on behalf of the Colorado Subclass.

347. Colorado law recognizes an action for product defects that complements Colorado's Product Liability Statute, COLO. REV. STAT. TITLE 13, Article 21, Part 4.

348. Volkswagen is a "manufacturer" and "seller" of the Affected Vehicles within the meaning of COLO. REV. STAT. § 13-21-401(1).

349. Volkswagen manufactured and sold the Affected Vehicles in a defective condition and in a condition that was unreasonably dangerous to drivers, other motorists, pedestrians, and others or to their property, including persons who may reasonably be expected to use, consume, or be affected by them, in at least the following respects: (i) the Affected Vehicles were defectively designed, assembled, fabricated, produced, and constructed in that they were not EPA compliant and used a "defeat device"; and (ii) the Affected Vehicles were not accompanied by adequate warnings about their defective nature.

350. The Affected Vehicles were defective and unreasonably dangerous at the time they were sold by Volkswagen and were intended to and did reach Plaintiffs and the other Class members in substantially the same condition as they were in when they were manufactured, sold, and left the control of Volkswagen.

351. Plaintiffs and the other Class members are persons who were reasonably expected to use, consume, or be affected by the Affected Vehicles.

352. As a direct and proximate result of the defective and illegal conditions of the Affected Vehicles, Plaintiffs and the other Class members have suffered damages.

**COUNT III  
BREACH OF CONTRACT  
(Based on Colorado Law)**

353. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

354. Plaintiffs bring this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Colorado Subclass.

355. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiffs and the other Colorado Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Colorado Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Colorado Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

356. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Colorado Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1           357. As a direct and proximate result of Volkswagen's breach of contract,  
2 Plaintiffs and the Colorado Subclass have been damaged in an amount to be proven at  
3 trial, which shall include, but is not limited to, all compensatory damages, incidental  
4 and consequential damages, and other damages allowed by law.

5                                   **COUNT IV**  
6                                   **FRAUDULENT CONCEALMENT**  
7                                   **(Based on Colorado Law)**

8           358. Plaintiffs incorporate by reference all preceding allegations as though  
9 fully set forth herein.

10          359. Plaintiffs bring this Count on behalf of the Colorado Subclass.

11          360. Volkswagen concealed and suppressed material facts concerning the  
12 quality of its vehicles and the Volkswagen brand.

13          361. Volkswagen intentionally concealed that the CleanDiesel engine systems  
14 were not EPA-compliant and used a "defeat device", or acted with reckless disregard  
15 for the truth, and denied Plaintiffs and the other Class members information that is  
16 highly relevant to their purchasing decision.

17          362. Volkswagen further affirmatively misrepresented to Plaintiffs in  
18 advertising and other forms of communication, including standard and uniform  
19 material provided with each car, that the Affected Vehicles it was selling were new,  
20 had no significant defects, complied with EPA regulations and would perform and  
21 operate properly when driven in normal usage.

22          363. Volkswagen knew these representations were false when made.

23          364. The Affected Vehicles purchased or leased by Plaintiffs and the other  
24 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
25 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
26 system, as alleged herein.

27          365. Volkswagen had a duty to disclose that these Affected Vehicles were  
28 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions

1 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
2 device” installed in the defective CleanDiesel engine system, because Plaintiffs and  
3 the other Class members relied on Volkswagen’s material representations that the  
4 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
5 and free from defects.

6 366. The aforementioned concealment was material because if it had been  
7 disclosed Plaintiffs and the other Class members would not have bought or leased the  
8 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
9 they paid.

10 367. The aforementioned representations were material because they were  
11 facts that would typically be relied on by a person purchasing or leasing a new motor  
12 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
13 false because it knew that it had to use the “defeat device” in order for Affected  
14 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
15 false statements in order to sell Affected Vehicles.

16 368. Plaintiffs and the other Class members relied on Volkswagen’s reputation  
17 – along with Volkswagen’s failure to disclose the faulty and defective nature of the  
18 CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected  
19 Vehicles were safe and reliable, and other similar false statements – in purchasing or  
20 leasing Volkswagen’s Affected Vehicles.

21 369. As a result of their reliance, Plaintiffs and the other Class members have  
22 been injured in an amount to be proven at trial, including, but not limited to, their lost  
23 benefit of the bargain and overpayment at the time of purchase or lease and/or the  
24 diminished value of their Affected Vehicles.

25 370. Volkswagen’s conduct was knowing, intentional, with malice,  
26 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
27 Plaintiffs and the other Class members. Plaintiffs and the other Class members are  
28



1 therefore entitled to an award of punitive damages to the extent permitted under  
2 applicable law.

3 **H. Claims Brought on Behalf of the Connecticut Subclass**

4 **COUNT I**  
5 **VIOLATIONS OF THE UNFAIR TRADE PRACTICES ACT**  
6 **(CONN. GEN. STAT. ANN. §§ 42-110A, *et seq.*)**

7 371. Plaintiff Spencer Moore (“Plaintiff,” for purposes of all Connecticut  
8 Subclass Counts) incorporates by reference all preceding allegations as though fully  
9 set forth herein.

10 372. Plaintiff brings this Count on behalf of the Connecticut Subclass.

11 373. Plaintiff and Volkswagen are each “persons” as defined by CONN. GEN.  
12 STAT. ANN. § 42-110a(3).

13 374. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that  
14 “[n]o person shall engage in unfair methods of competition and unfair or deceptive  
15 acts or practices in the conduct of any trade or commerce.” CONN. GEN. STAT. ANN.  
16 § 42-110b(a). The CUTPA further provides a private right of action under CONN.  
17 GEN. STAT. ANN. § 42-110g(a).

18 375. By failing to disclose and actively concealing that the CleanDiesel engine  
19 systems were not EPA-compliant and used a “defeat device” in the Affected Vehicles,  
20 Volkswagen engaged in deceptive business practices prohibited by the CUTPA,  
21 including (1) representing that Affected Vehicles have characteristics, uses, benefits,  
22 and qualities which they do not have, (2) representing that Affected Vehicles are of a  
23 particular standard, quality, and grade when they are not, (3) advertising Affected  
24 Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or  
25 practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

26 376. As alleged above, Volkswagen made numerous material statements about  
27 the benefits and characteristics of the CleanDiesel engine system that were either false  
28

1 or misleading. Each of these statements contributed to the deceptive context of  
2 Volkswagen's unlawful advertising and representations as a whole.

3 377. Volkswagen knew that the CleanDiesel engine system in the Affected  
4 Vehicles were defectively designed or manufactured, were not EPA-compliant, and  
5 were not suitable for their intended use. Volkswagen nevertheless failed to warn  
6 Plaintiff about these defects despite having a duty to do so.

7 378. Volkswagen owed Plaintiff a duty to disclose the defective nature of the  
8 CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- 9 a) Possessed exclusive knowledge of the defects rendering the  
10 Affected Vehicles illegal under EPA standards;
- 11 b) Intentionally concealed the defects associated with CleanDiesel  
12 through its deceptive marketing campaigns that it designed to hide  
13 the defects in the CleanDiesel engine system; and/or
- 14 c) Made incomplete representations about the characteristics and  
15 performance of the CleanDiesel engine system generally, while  
16 purposefully withholding material facts from Plaintiff that  
17 contradicted these representations.

18 379. Volkswagen's unfair or deceptive acts or practices were likely to and did  
19 in fact deceive reasonable consumers, including Plaintiff, about the true performance  
20 and characteristics of the CleanDiesel engine system.

21 380. As a result of its violations of the CUTPA detailed above, Volkswagen  
22 caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff.  
23 Plaintiff currently owns or leases, or within the class period has owned or leased, an  
24 Affected Vehicle that is defective. Defects associated with the CleanDiesel engine  
25 system have caused the value of Affected Vehicles to decrease.



386. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Connecticut Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

387. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Connecticut Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT III**  
**FRAUDULENT CONCEALMENT**  
**(Based on Connecticut Law)**

388. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

389. Plaintiff brings this Count on behalf of the Connecticut Subclass.

390. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a “defeat device,” or acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

391. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

392. Volkswagen knew these representations were false when made.

1           393. The Affected Vehicles purchased or leased by Plaintiff and the other  
2 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
3 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
4 system, as alleged herein.

5           394. Volkswagen had a duty to disclose that these Affected Vehicles were  
6 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
7 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
8 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
9 other Class members relied on Volkswagen’s material representations that the  
10 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
11 and free from defects.

12           395. The aforementioned concealment was material because if it had been  
13 disclosed Plaintiff and the other Class members would not have bought or leased the  
14 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
15 they paid.

16           396. The aforementioned representations were material because they were  
17 facts that would typically be relied on by a person purchasing or leasing a new motor  
18 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
19 false because it knew that it had to use the “defeat device” in order for Affected  
20 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
21 false statements in order to sell Affected Vehicles.

22           397. Plaintiff and the other Class members relied on Volkswagen’s reputation  
23 – along with Volkswagen’s failure to disclose the faulty and defective nature of the  
24 CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected  
25 Vehicles were safe and reliable, and other similar false statements – in purchasing or  
26 leasing Volkswagen’s Affected Vehicles.

1           398. As a result of their reliance, Plaintiff and the other Class members have  
2 been injured in an amount to be proven at trial, including, but not limited to, their lost  
3 benefit of the bargain and overpayment at the time of purchase or lease and/or the  
4 diminished value of their Affected Vehicles.

5           399. Volkswagen's conduct was knowing, intentional, with malice,  
6 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
7 Plaintiff and the other Class members. Plaintiff and the other Class members are  
8 therefore entitled to an award of punitive damages.

9 **I. Claims Brought on Behalf of the Delaware Subclass**

10 **COUNT I**  
11 **VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT**  
**(6 DEL. CODE § 2513, *ET SEQ.*)**

12           400. Plaintiff John Gauger ("Plaintiff," for purposes of all Delaware Subclass  
13 Counts) incorporates by reference all preceding allegations as though fully set forth  
14 herein.

15           401. This claim is brought only on behalf of the Delaware Subclass.

16           402. Defendants are each a "person" within the meaning of 6 DEL. CODE  
17 § 2511(7).

18           403. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act,  
19 use or employment by any person of any deception, fraud, false pretense, false  
20 promise, misrepresentation, or the concealment, suppression, or omission of any  
21 material fact with intent that others rely upon such concealment, suppression or  
22 omission, in connection with the sale, lease or advertisement of any merchandise,  
23 whether or not any person has in fact been misled, deceived or damaged thereby." 6  
24 DEL. CODE § 2513(a).

25           404. Volkswagen participated in deceptive trade practices that violated the  
26 Delaware CFA as described herein. In the course of its business, Volkswagen  
27 installed the "defeat device" and concealed that its CleanDiesel systems failed EPA  
28

1 regulations as described herein and otherwise engaged in activities with a tendency or  
2 capacity to deceive. Volkswagen also engaged in unlawful trade practices by  
3 employing deception, deceptive acts or practices, fraud, misrepresentations, or  
4 concealment, suppression or omission of any material fact with intent that others rely  
5 upon such concealment, suppression or omission, in connection with the sale of  
6 Affected Vehicles.

7 405. Volkswagen has known of the true characteristics of its CleanDiesel  
8 engine systems for at least six years, but concealed all of that information until  
9 recently.

10 406. Volkswagen was also aware that it valued profits over environmental  
11 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
12 distributing vehicles throughout the United States that did not comply with EPA  
13 regulations. Volkswagen concealed this information as well.

14 407. By failing to disclose and by actively concealing the “defeat device” and  
15 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
16 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
17 by presenting itself as a reputable manufacturer that valued safety, environmental  
18 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
19 Volkswagen engaged in deceptive business practices in violation of the Delaware  
20 CFA.

21 408. In the course of Volkswagen’s business, it willfully failed to disclose and  
22 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
23 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
24 compounded the deception by repeatedly asserting that the Affected Vehicles were  
25 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
26 be a reputable manufacturer that valued safety, environmental cleanliness and  
27 efficiency, and stood behind its vehicles once they are on the road.  
28



1           409. Volkswagen's unfair or deceptive acts or practices were likely to and did  
2 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
3 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
4 Audi brands, the devaluing of safety, integrity and lawfulness at Volkswagen, and the  
5 true value of the Affected Vehicles.

6           410. Volkswagen intentionally and knowingly misrepresented material facts  
7 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Delaware  
8 Subclass.

9           411. Volkswagen knew or should have known that its conduct violated the  
10 Delaware CFA.

11           412. As alleged above, Volkswagen made material statements about the safety,  
12 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
13 and Audi brands that were either false or misleading.

14           413. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
15 efficiency and reliability of the Affected Vehicles and the devaluing of safety,  
16 integrity and lawfulness at Volkswagen, because Volkswagen:

- 17           a. Possessed exclusive knowledge that it valued profits  
18 over environmental cleanliness, efficiency, and  
19 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 20           b. Intentionally concealed the foregoing from Plaintiffs;  
21 and/or
- 22           c. Made incomplete representations about the safety,  
23 cleanliness, efficiency and reliability of the Affected  
24 Vehicles generally, and the use of the "defeat device"  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
facts from Plaintiffs that contradicted these  
25 representations.

26           414. Because Volkswagen fraudulently concealed the "defeat device" and the  
27 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
28 of negative publicity once the use of the "defeat device" and true characteristics of the

1 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
2 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
3 Volkswagen's conduct, they are now worth significantly less than they otherwise  
4 would be.

5 415. Volkswagen's fraudulent use of the "defeat device" and its concealment  
6 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
7 and the Delaware Subclass. A vehicle made by a reputable manufacturer of  
8 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
9 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
10 its polluting engines rather than promptly remedying them.

11 416. Plaintiff and the Delaware Subclass suffered ascertainable loss caused by  
12 Volkswagen's misrepresentations and its concealment of and failure to disclose  
13 material information. Class members who purchased Affected Vehicles either would  
14 have paid less for their vehicles or would not have purchased or leased them at all.

15 417. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
16 to refrain from unfair and deceptive acts or practices under the Delaware CFA. All  
17 owners of Affected Vehicles suffered ascertainable loss in the form of diminished  
18 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
19 practices made in the course of Volkswagen's business.

20 418. Volkswagen's violations present a continuing risk to Plaintiff as well as  
21 to the general public. Volkswagen's unlawful acts and practices complained of herein  
22 affect the public interest.

23 419. As a direct and proximate result of Volkswagen's violations of the  
24 Delaware CFA, Plaintiff and the Delaware Subclass have suffered injury-in-fact  
25 and/or actual damage.

26 420. Plaintiff seeks damages under the Delaware CFA for injury resulting  
27 from the direct and natural consequences of Volkswagen's unlawful conduct. *See*,  
28

1 *e.g., Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiff also  
 2 seeks an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices,  
 3 declaratory relief, attorneys' fees, and any other just and proper relief available under  
 4 the Delaware CFA.

5 421. Volkswagen engaged in gross, oppressive or aggravated conduct  
 6 justifying the imposition of punitive damages.

7 **COUNT II**  
 8 **FRAUD BY CONCEALMENT**

9 422. Plaintiffs reallege and incorporate by reference all paragraphs as though  
 10 fully set forth herein.

11 423. This claim is brought on behalf of the Delaware Subclass.

12 424. Volkswagen intentionally concealed and suppressed material facts  
 13 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
 14 notwithstanding references in the very model names of the subject vehicles as "Clean  
 15 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
 16 secret scheme to evade federal and state vehicle emissions standards by installing  
 17 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
 18 which contributes to the creation of ozone and smog. The software installed on the  
 19 vehicles at issue was designed nefariously to kick-in during emissions certification  
 20 testing, such that the vehicles would show far lower emissions than when actually  
 21 operating on the road. The result was what Volkswagen intended: vehicles passed  
 22 emissions certifications by way of deliberately induced false readings. Reportedly,  
 23 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
 24 vehicles at up to 40 times applicable standards.

25 425. Plaintiffs and Delaware Subclass members reasonably relied upon  
 26 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
 27 representations were false and gravely misleading. As alleged herein, Volkswagen  
 28 employed extremely sophisticated methods of deception. Plaintiffs and Delaware

1 Subclass members did not, and could not, unravel Volkswagen's deception on their  
2 own.

3 426. Volkswagen concealed and suppressed material facts concerning what is  
4 evidently the true culture of Volkswagen—one characterized by an emphasis on  
5 profits and sales above compliance with federal and state clean air laws, and emissions  
6 regulations that are meant to protect the public and consumers. It also emphasized  
7 profits and sales over the trust that Plaintiffs and Delaware Subclass members placed  
8 in its representations. As one customer, Priya Shah, put it in a quotation cited by the  
9 *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
10 intentional manipulation of the system. That's just a whole other level of not only  
11 lying to the government, but also lying to your consumer. People buy diesel cars from  
12 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
13 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
14 want to be spewing noxious gases into the environment."

15 427. Necessarily, Volkswagen also took steps to ensure that its employees did  
16 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
17 Delaware Subclass members. Volkswagen did so in order to boost the reputations of  
18 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
19 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
20 with applicable law, including federal and state clean air laws and emissions  
21 regulations, and that its vehicles likewise comply with applicable law and regulations.  
22 Volkswagen's false representations were material to consumers, both because they  
23 concerned the quality of the Affected Vehicles, including their compliance with  
24 applicable federal and state laws and regulations regarding clean air and emissions,  
25 and also because the representations played a significant role in the value of the  
26 vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Delaware  
27  
28

1 Subclass members, highly valued that the vehicles they were purchasing or leasing  
2 were *clean* diesel cars, and they paid accordingly.

3 428. Volkswagen had a duty to disclose its emissions scheme because  
4 knowledge of the scheme and its details were known and/or accessible only to  
5 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
6 maintenance of its scheme, and because Volkswagen knew the facts were not known  
7 to or reasonably discoverable by Plaintiffs or Delaware Subclass members.  
8 Volkswagen also had a duty to disclose because it made general affirmative  
9 representations about the qualities of its vehicles with respect to emissions standards,  
10 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
11 which were misleading, deceptive, and incomplete without the disclosure of the  
12 additional facts set forth above regarding its emissions scheme, the actual emissions of  
13 its vehicles, its actual philosophy with respect to compliance with federal and state  
14 clean air laws and emissions regulations, and its actual practices with respect to the  
15 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
16 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
17 These omitted and concealed facts were material because they directly impact the  
18 value of the Affected Vehicles purchased or leased by Plaintiffs and Delaware  
19 Subclass members. Whether a manufacturer's products comply with federal and state  
20 clean air laws and emissions regulations, and whether that manufacturer tells the truth  
21 with respect to such compliance or non-compliance, are material concerns to a  
22 consumer, including with respect to the emissions certification testing their vehicles  
23 must pass. Volkswagen represented to Plaintiffs and Delaware Subclass members that  
24 they were purchasing *clean* diesel vehicles, and certification testing appeared to  
25 confirm this—except that, secretly, Volkswagen had subverted the testing process  
26 thoroughly.

1           429. Volkswagen actively concealed and/or suppressed these material facts, in  
2 whole or in part, to pad and protect its profits and to avoid the perception that its  
3 vehicles did not or could not comply with federal and state laws governing clean air  
4 and emissions, which perception would hurt the brand's image and cost Volkswagen  
5 money, and it did so at the expense of Plaintiffs and Delaware Subclass members.

6           430. On information and belief, Volkswagen has still not made full and  
7 adequate disclosures, and continues to defraud Plaintiffs and Delaware Subclass  
8 members by concealing material information regarding the emissions qualities of its  
9 vehicles and its emissions scheme.

10           431. Plaintiffs and Delaware Subclass members were unaware of the omitted  
11 material facts referenced herein, and they would not have acted as they did if they had  
12 known of the concealed and/or suppressed facts, in that they would not have  
13 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
14 not have continued to drive their heavily polluting vehicles, or would have taken other  
15 affirmative steps in light of the information concealed from them. Plaintiffs' and  
16 Delaware Subclass Members' actions were justified. Volkswagen was in exclusive  
17 control of the material facts, and such facts were not known to the public, Plaintiffs, or  
18 Delaware Subclass members.

19           432. Because of the concealment and/or suppression of the facts, Plaintiffs and  
20 Delaware Subclass members have sustained damage because they own vehicles that  
21 are diminished in value as a result of Volkswagen's concealment of the true quality  
22 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
23 the actual emissions qualities and quantities of hundreds of thousands of Volkswagen-  
24 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
25 corporate policies. Had Plaintiffs and Delaware Subclass members been aware of  
26 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
27 with applicable federal and state laws and regulations, Plaintiffs and Delaware  
28

1 Subclass members who purchased or leased new or previously owned vehicles would  
2 have paid less for their vehicles or would not have purchased or leased them at all.

3 433. The value of Plaintiffs' and Delaware Subclass Members' vehicles has  
4 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
5 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
6 to Plaintiffs' and Delaware Subclass members' vehicles and made any reasonable  
7 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
8 otherwise would have been fair market value for the vehicles. In addition, Class  
9 members are entitled to damages for loss of use, costs of additional fuel, costs of  
10 unused warranties, and other damages to be proved at trial.

11 434. Accordingly, Volkswagen is liable to Plaintiffs and Delaware Subclass  
12 members for damages in an amount to be proven at trial.

13 435. Volkswagen's acts were done wantonly, maliciously, oppressively,  
14 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and  
15 Delaware Subclass members' rights and the representations that Volkswagen made to  
16 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
17 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
18 sufficient to deter such conduct in the future, which amount is to be determined  
19 according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON DELAWARE LAW)**

22 436. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 437. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the Delaware Subclass.

26 438. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28



1 defect and/or defective design as alleged herein, caused Plaintiff and the other  
2 Delaware Subclass members to make their purchases or leases of their Affected  
3 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
4 Delaware Subclass members would not have purchased or leased these Affected  
5 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
6 they paid, and/or would have purchased or leased less expensive alternative vehicles  
7 that did not contain the CleanDiesel engine system and which were not marketed as  
8 including such a system. Accordingly, Plaintiff and the other Delaware Subclass  
9 members overpaid for their Affected Vehicles and did not receive the benefit of their  
10 bargain.

11 439. Each and every sale or lease of an Affected Vehicle by an authorized  
12 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
13 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
14 other Delaware Subclass members defective Affected Vehicles and by misrepresenting  
15 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
16 defective design, including information known to Volkswagen rendering each  
17 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
18 equipped with a CleanDiesel engine system.

19 440. As a direct and proximate result of Volkswagen's breach of contract,  
20 Plaintiff and the Delaware Subclass have been damaged in an amount to be proven at  
21 trial, which shall include, but is not limited to, all compensatory damages, incidental  
22 and consequential damages, and other damages allowed by law.  
23  
24  
25  
26  
27  
28

**J. Claims Brought on Behalf of the District of Columbia Subclass**

**COUNT I  
VIOLATION OF THE CONSUMER PROTECTION PROCEDURES ACT  
(D.C. CODE § 28-3901, *ET SEQ.*)**

441. Plaintiff Hanaa Rifaey (“Plaintiff,” for purposes of all District of Columbia (“DC”) Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

442. This claim is brought only on behalf of the DC Subclass.

443. Defendants are each a “person” under the Consumer Protection Procedures Act (“District of Columbia CPPA”), D.C. CODE § 28-3901(a)(1).

444. Class Members are “consumers,” as defined by D.C. CODE § 28-3901(1)(2), who purchased or leased one or more Affected Vehicles.

445. Volkswagen’s actions as set forth herein constitute “trade practices” under D.C. CODE § 28-3901.

446. Volkswagen participated in unfair or deceptive acts or practices that violated the District of Columbia CPPA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in unfair or deceptive practices prohibited by the District of Columbia CPPA, D.C. CODE § 28-3901, *et seq.*, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) representing that the subject of a transaction involving the Affected Vehicles has been supplied in accordance with a previous representation when it has not; (5) misrepresenting as to a material fact which has a tendency to mislead; and (6) failing to state a material fact when such failure tends to mislead.

1           447. In the course of its business in trade or commerce, Volkswagen installed  
2 the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations  
3 as described herein and otherwise engaged in activities with a tendency or capacity to  
4 deceive. Volkswagen also engaged in unlawful trade practices by employing  
5 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
6 suppression or omission of any material fact with intent that others rely upon such  
7 concealment, suppression or omission, in connection with the sale of Affected  
8 Vehicles.

9           448. Volkswagen has known of the true characteristics of its CleanDiesel  
10 engine systems for at least six years, but concealed all of that information until  
11 recently.

12           449. Volkswagen was also aware that it valued profits over environmental  
13 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
14 distributing vehicles throughout the United States that did not comply with EPA  
15 regulations. Volkswagen concealed this information as well.

16           450. By failing to disclose and by actively concealing the “defeat device” and  
17 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
18 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
19 by presenting itself as a reputable manufacturer that valued safety, environmental  
20 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
21 Volkswagen engaged in unfair and deceptive business practices in violation of the  
22 District of Columbia CPPA.

23           451. In the course of Volkswagen’s business, it willfully failed to disclose and  
24 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
25 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
26 compounded the deception by repeatedly asserting that the Affected Vehicles were  
27 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
28

1 be a reputable manufacturer that valued safety, environmental cleanliness and  
2 efficiency, and stood behind its vehicles once they are on the road.

3 452. Volkswagen's unfair or deceptive acts or practices were likely to and did  
4 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
5 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
6 Audi brands, the devaluing of safety, integrity and lawfulness at Volkswagen, and the  
7 true value of the Affected Vehicles.

8 453. Volkswagen intentionally and knowingly misrepresented material facts  
9 regarding the Affected Vehicles with an intent to mislead Plaintiff and the DC  
10 Subclass.

11 454. Volkswagen knew or should have known that its conduct violated the  
12 District of Columbia CPPA.

13 455. As alleged above, Volkswagen made material statements about the safety,  
14 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
15 and Audi brands that were either false or misleading.

16 456. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
17 efficiency and reliability of the Affected Vehicles and the devaluing of safety,  
18 integrity and lawfulness at Volkswagen, because Volkswagen:

- 19 a. Possessed exclusive knowledge that it valued profits  
20 over environmental cleanliness, efficiency, and  
21 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 22 b. Intentionally concealed the foregoing from Plaintiffs;  
23 and/or
- 24 c. Made incomplete representations about the safety,  
25 cleanliness, efficiency and reliability of the Affected  
26 Vehicles generally, and the "defeat device" and true  
nature of the CleanDiesel engine system in particular,  
while purposefully withholding material facts from  
Plaintiffs that contradicted these representations.

1           457. Because Volkswagen fraudulently concealed the “defeat device” and the  
2 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
3 of negative publicity once the use of the “defeat device” and true characteristics of the  
4 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
5 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
6 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
7 would be.

8           458. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
9 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
10 and the DC Subclass. A vehicle made by a reputable manufacturer of environmentally  
11 friendly vehicles is worth more than an otherwise comparable vehicle made by a  
12 disreputable manufacturer of environmentally dirty vehicles that conceals its polluting  
13 engines rather than promptly remedying them.

14           459. Plaintiffs and the DC Subclass suffered ascertainable loss caused by  
15 Volkswagen’s misrepresentations and its concealment of and failure to disclose  
16 material information. Class members who purchased Affected Vehicles either would  
17 have paid less for their vehicles or would not have purchased or leased them at all.

18           460. All owners of Affected Vehicles suffered ascertainable loss in the form of  
19 diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair  
20 acts and practices made in the course of Volkswagen’s business.

21           461. Volkswagen’s violations present a continuing risk to Plaintiffs as well as  
22 to the general public. Volkswagen’s unlawful acts and practices complained of herein  
23 affect the public interest.

24           462. As a direct and proximate result of Volkswagen’s violations of the  
25 District of Columbia CPPA, Plaintiffs and the DC Subclass have suffered injury-in-  
26 fact and/or actual damage.

1           463. Plaintiff and the DC Subclass are entitled to recover treble damages or  
2 \$1,500, whichever is greater, punitive damages, reasonable attorneys' fees, and any  
3 other relief the Court deems proper, under D.C. CODE § 28-3901.

4           464. Plaintiffs seek punitive damages against Volkswagen because  
5 Volkswagen's conduct evidences malice and/or egregious conduct. Volkswagen  
6 maliciously and egregiously misrepresented the safety, cleanliness, efficiency and  
7 reliability of the Affected Vehicles, deceived Class Members, and concealed material  
8 facts that only it knew, all to avoid the expense and public relations nightmare of  
9 correcting its defective and environmentally dirty CleanDiesel engine system.  
10 Volkswagen's unlawful conduct constitutes malice warranting punitive damages.

## 11           **COUNT II** 12           **FRAUD BY CONCEALMENT**

13           465. Plaintiffs reallege and incorporate by reference all paragraphs as though  
14 fully set forth herein.

15           466. This claim is brought on behalf of the DC Subclass.

16           467. Volkswagen intentionally concealed and suppressed material facts  
17 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
18 notwithstanding references in the very model names of the subject vehicles as "Clean  
19 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
20 secret scheme to evade federal and state vehicle emissions standards by installing  
21 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
22 which contributes to the creation of ozone and smog. The software installed on the  
23 vehicles at issue was designed nefariously to kick-in during emissions certification  
24 testing, such that the vehicles would show far lower emissions than when actually  
25 operating on the road. The result was what Volkswagen intended: vehicles passed  
26 emissions certifications by way of deliberately induced false readings. Reportedly,  
27 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
28 vehicles at up to 40 times applicable standards.

1           468. Plaintiffs and DC Subclass members reasonably relied upon  
2 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
3 representations were false and gravely misleading. As alleged herein, Volkswagen  
4 employed extremely sophisticated methods of deception. Plaintiffs and DC Subclass  
5 members did not, and could not, unravel Volkswagen's deception on their own.

6           469. Volkswagen concealed and suppressed material facts concerning what is  
7 evidently the true culture of Volkswagen—one characterized by an emphasis on  
8 profits and sales above compliance with federal and state clean air laws, and emissions  
9 regulations that are meant to protect the public and consumers. It also emphasized  
10 profits and sales over the trust that Plaintiffs and DC Subclass members placed in its  
11 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
12 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
13 intentional manipulation of the system. That's just a whole other level of not only  
14 lying to the government, but also lying to your consumer. People buy diesel cars from  
15 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
16 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
17 want to be spewing noxious gases into the environment."

18           470. Necessarily, Volkswagen also took steps to ensure that its employees did  
19 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
20 DC Subclass members. Volkswagen did so in order to boost the reputations of its  
21 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
22 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
23 with applicable law, including federal and state clean air laws and emissions  
24 regulations, and that its vehicles likewise comply with applicable law and regulations.  
25 Volkswagen's false representations were material to consumers, both because they  
26 concerned the quality of the Affected Vehicles, including their compliance with  
27 applicable federal and state laws and regulations regarding clean air and emissions,  
28



1 and also because the representations played a significant role in the value of the  
2 vehicles. As Volkswagen well knew, its customers, including Plaintiffs and DC  
3 Subclass members, highly valued that the vehicles they were purchasing or leasing  
4 were *clean* diesel cars, and they paid accordingly.

5 471. Volkswagen had a duty to disclose its emissions scheme because  
6 knowledge of the scheme and its details were known and/or accessible only to  
7 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
8 maintenance of its scheme, and because Volkswagen knew the facts were not known  
9 to or reasonably discoverable by Plaintiffs or DC Subclass members. Volkswagen  
10 also had a duty to disclose because it made general affirmative representations about  
11 the qualities of its vehicles with respect to emissions standards, starting with  
12 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
13 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
14 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
15 actual philosophy with respect to compliance with federal and state clean air laws and  
16 emissions regulations, and its actual practices with respect to the vehicles at issue.  
17 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
18 disclose not just the partial truth, but the entire truth. These omitted and concealed  
19 facts were material because they directly impact the value of the Affected Vehicles  
20 purchased or leased by Plaintiffs and DC Subclass members. Whether a  
21 manufacturer's products comply with federal and state clean air laws and emissions  
22 regulations, and whether that manufacturer tells the truth with respect to such  
23 compliance or non-compliance, are material concerns to a consumer, including with  
24 respect to the emissions certification testing their vehicles must pass. Volkswagen  
25 represented to Plaintiffs and DC Subclass members that they were purchasing *clean*  
26 diesel vehicles, and certification testing appeared to confirm this—except that,  
27 secretly, Volkswagen had subverted the testing process thoroughly.

1           472. Volkswagen actively concealed and/or suppressed these material facts, in  
2 whole or in part, to pad and protect its profits and to avoid the perception that its  
3 vehicles did not or could not comply with federal and state laws governing clean air  
4 and emissions, which perception would hurt the brand's image and cost Volkswagen  
5 money, and it did so at the expense of Plaintiffs and DC Subclass members.

6           473. On information and belief, Volkswagen has still not made full and  
7 adequate disclosures, and continues to defraud Plaintiffs and DC Subclass members by  
8 concealing material information regarding the emissions qualities of its vehicles and  
9 its emissions scheme.

10           474. Plaintiffs and DC Subclass members were unaware of the omitted  
11 material facts referenced herein, and they would not have acted as they did if they had  
12 known of the concealed and/or suppressed facts, in that they would not have  
13 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
14 not have continued to drive their heavily polluting vehicles, or would have taken other  
15 affirmative steps in light of the information concealed from them. Plaintiffs' and DC  
16 Subclass Members' actions were justified. Volkswagen was in exclusive control of  
17 the material facts, and such facts were not known to the public, Plaintiffs, or DC  
18 Subclass members.

19           475. Because of the concealment and/or suppression of the facts, Plaintiffs and  
20 DC Subclass members have sustained damage because they own vehicles that are  
21 diminished in value as a result of Volkswagen's concealment of the true quality and  
22 quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the  
23 actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and  
24 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
25 policies. Had Plaintiffs and DC Subclass members been aware of Volkswagen's  
26 emissions scheme, and the company's callous disregard for compliance with  
27 applicable federal and state laws and regulations, Plaintiffs and DC Subclass members  
28

1 who purchased or leased new or previously owned vehicles would have paid less for  
2 their vehicles or would not have purchased or leased them at all.

3 476. The value of Plaintiffs' and DC Subclass Members' vehicles has  
4 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
5 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
6 to Plaintiffs' and DC Subclass members' vehicles and made any reasonable consumer  
7 reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would  
8 have been fair market value for the vehicles. In addition, Class members are entitled  
9 to damages for loss of use, costs of additional fuel, costs of unused warranties, and  
10 other damages to be proved at trial.

11 477. Accordingly, Volkswagen is liable to Plaintiffs and DC Subclass  
12 members for damages in an amount to be proven at trial.

13 478. Volkswagen's acts were done wantonly, maliciously, oppressively,  
14 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and DC  
15 Subclass members' rights and the representations that Volkswagen made to them, in  
16 order to enrich Volkswagen. To the extent permitted under applicable law,  
17 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
18 sufficient to deter such conduct in the future, which amount is to be determined  
19 according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON DISTRICT OF COLUMBIA LAW)**

22 479. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 480. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the DC Subclass.

26 481. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28

1 defect and/or defective design as alleged herein, caused Plaintiff and the other DC  
 2 Subclass members to make their purchases or leases of their Affected Vehicles.  
 3 Absent those misrepresentations and omissions, Plaintiff and the other DC Subclass  
 4 members would not have purchased or leased these Affected Vehicles, would not have  
 5 purchased or leased these Affected Vehicles at the prices they paid, and/or would have  
 6 purchased or leased less expensive alternative vehicles that did not contain the  
 7 CleanDiesel engine system and which were not marketed as including such a system.  
 8 Accordingly, Plaintiff and the other DC Subclass members overpaid for their Affected  
 9 Vehicles and did not receive the benefit of their bargain.

10 482. Each and every sale or lease of an Affected Vehicle by an authorized  
 11 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 12 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 13 other DC Subclass members defective Affected Vehicles and by misrepresenting or  
 14 failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 15 defective design, including information known to Volkswagen rendering each  
 16 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 17 equipped with a CleanDiesel engine system.

18 483. As a direct and proximate result of Volkswagen's breach of contract,  
 19 Plaintiff and the DC Subclass have been damaged in an amount to be proven at trial,  
 20 which shall include, but is not limited to, all compensatory damages, incidental and  
 21 consequential damages, and other damages allowed by law.

22 **K. Claims Brought on Behalf of the Florida Subclass**

23 **COUNT I**  
 24 **VIOLATIONS OF THE FLORIDA DECEPTIVE & UNFAIR TRADE**  
 25 **PRACTICES ACT**  
 26 **(FLA. STAT. §§ 501.201, *et seq.*)**

27 484. Plaintiff Deborah Markward ("Plaintiff," for purposes of all Florida  
 28 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 set forth herein.

1 485. Plaintiff brings this Count on behalf of the Florida Subclass.

2 486. Plaintiffs are “consumers” within the meaning of Florida Unfair and  
3 Deceptive Trade Practices Act, FLA. STAT. § 501.203(7).

4 487. Volkswagen engaged in “trade or commerce” within the meaning of FLA.  
5 STAT. § 501.203(8).

6 488. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair  
7 methods of competition, unconscionable acts or practices, and unfair or deceptive acts  
8 or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.204(1).  
9 Volkswagen participated in unfair and deceptive trade practices that violated the  
10 FUDTPA as described herein.

11 489. In the course of Volkswagen’s business, it willfully failed to disclose and  
12 actively concealed that the CleanDiesel Engine System was non-EPA compliant, and  
13 the use of the “defeat device” in Affected Vehicles as described above. Accordingly,  
14 Volkswagen engaged in unfair methods of competition, unconscionable acts or  
15 practices, and unfair or deceptive acts or practices as defined in FLA. STAT.  
16 § 501.204(1), including representing that Affected Vehicles have characteristics, uses,  
17 benefits, and qualities which they do not have; representing that Affected Vehicles are  
18 of a particular standard and quality when they are not; advertising Affected Vehicles  
19 with the intent not to sell them as advertised; and otherwise engaging in conduct likely  
20 to deceive.

21 490. In the course of its business, Volkswagen installed the “defeat device”  
22 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
23 and otherwise engaged in activities with a tendency or capacity to deceive.  
24 Volkswagen also engaged in unlawful trade practices by employing deception,  
25 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
26 omission of any material fact with intent that others rely upon such concealment,  
27 suppression or omission, in connection with the sale of Affected Vehicles.  
28

1           491. Volkswagen has known of its use of the “defeat device” and the true  
2 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
3 information until recently.

4           492. Volkswagen was also aware that it valued profits over environmental  
5 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
6 distributing vehicles throughout the United States that did not comply with EPA  
7 regulations. Volkswagen concealed this information as well.

8           493. By failing to disclose and by actively concealing the “defeat device” and  
9 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
10 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
11 by presenting itself as a reputable manufacturer that valued safety, environmental  
12 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
13 Volkswagen engaged in deceptive business practices in violation of the FUDTPA.

14           494. In the course of Volkswagen’s business, it willfully failed to disclose and  
15 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
16 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
17 compounded the deception by repeatedly asserting that the Affected Vehicles were  
18 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
19 be a reputable manufacturer that valued safety, environmental cleanliness and  
20 efficiency, and stood behind its vehicles once they are on the road.

21           495. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
22 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
23 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
24 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
25 and the true value of the Affected Vehicles.

1           496. Volkswagen intentionally and knowingly misrepresented material facts  
2 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Florida  
3 Subclass.

4           497. Volkswagen knew or should have known that its conduct violated the  
5 FUDTPA.

6           498. As alleged above, Volkswagen made material statements about the safety,  
7 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
8 and Audi brands that were either false or misleading.

9           499. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
10 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
11 cleanliness and integrity at Volkswagen, because Volkswagen:

12           a. Possessed exclusive knowledge that it valued profits  
13 over environmental cleanliness, efficiency, and lawfulness,  
14 and that it was manufacturing, selling and distributing  
vehicles throughout the United States that did not comply  
with EPA regulations;

15           b. Intentionally concealed the foregoing from Plaintiffs;  
16 and/or

17           c. Made incomplete representations about the safety,  
18 cleanliness, efficiency and reliability of the Affected  
19 Vehicles generally, and the “defeat device” and true nature  
of the CleanDiesel engine system in particular, while  
purposefully withholding material facts from Plaintiffs that  
contradicted these representations.

20           500. Because Volkswagen fraudulently concealed the “defeat device” and the  
21 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
22 of negative publicity once the use of the “defeat device” and true characteristics of the  
23 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
24 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
25 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
26 would be.



1           501. Volkswagen's fraudulent use of the "defeat device" and its concealment  
2 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
3 and the Florida Subclass. A vehicle made by a reputable manufacturer of  
4 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
5 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
6 its polluting engines rather than promptly remedying them.

7           502. Plaintiffs and the Florida Subclass suffered ascertainable loss caused by  
8 Volkswagen's misrepresentations and its concealment of and failure to disclose  
9 material information. Class members who purchased the Affected Vehicles either  
10 would have paid less for their vehicles or would not have purchased or leased them at  
11 all.

12           503. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
13 to refrain from unfair and deceptive acts or practices under the FUDTPA. All owners  
14 of Affected Vehicles suffered ascertainable loss in the form of diminished value of  
15 their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made  
16 in the course of Volkswagen's business.

17           504. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
18 to the general public. Volkswagen's unlawful acts and practices complained of herein  
19 affect the public interest.

20           505. As a direct and proximate result of Volkswagen's violations of the  
21 FUDTPA, Plaintiffs and the Florida Subclass have suffered injury-in-fact and/or actual  
22 damage.

23           506. Volkswagen's actions as set forth above occurred in the conduct of trade  
24 or commerce.

25           507. Plaintiff and the other Class members were injured as a result of  
26 Volkswagen's conduct in that Plaintiff and the other Class members overpaid for their  
27 Affected Vehicles and did not receive the benefit of their bargain, and their Affected  
28

1 Vehicles have suffered a diminution in value. These injuries are the direct and natural  
2 consequence of Volkswagen's misrepresentations and omissions.

3 **COUNT II**  
4 **BREACH OF CONTRACT**  
5 **(Based on Florida Law)**

6 508. Plaintiff incorporates by reference all preceding allegations as though  
7 fully set forth herein.

8 509. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
9 owned vehicle purchasers in the Florida Subclass.

10 510. Volkswagen's misrepresentations and omissions alleged herein, including  
11 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
12 defect and/or defective design as alleged herein, caused Plaintiff and the other Florida  
13 Subclass members to make their purchases or leases of their Affected Vehicles.  
14 Absent those misrepresentations and omissions, Plaintiff and the other Florida  
15 Subclass members would not have purchased or leased these Affected Vehicles, would  
16 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
17 would have purchased or leased less expensive alternative vehicles that did not contain  
18 the CleanDiesel engine system and which were not marketed as including such a  
19 system. Accordingly, Plaintiff and the other Florida Subclass members overpaid for  
20 their Affected Vehicles and did not receive the benefit of their bargain.

21 511. Each and every sale or lease of an Affected Vehicle by an authorized  
22 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
23 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
24 other Florida Subclass members defective Affected Vehicles and by misrepresenting  
25 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
26 defective design, including information known to Volkswagen rendering each  
27 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
28 equipped with a CleanDiesel engine system.

1           512. As a direct and proximate result of Volkswagen's breach of contract,  
2 Plaintiff and the Florida Subclass have been damaged in an amount to be proven at  
3 trial, which shall include, but is not limited to, all compensatory damages, incidental  
4 and consequential damages, and other damages allowed by law.

5                                   **COUNT III**  
6                                   **FRAUDULENT CONCEALMENT**  
7                                   **(Based on Florida Law)**

8           513. Plaintiff incorporates by reference all preceding allegations as though  
9 fully set forth herein.

10          514. Plaintiff brings this Count on behalf of the Florida Subclass.

11          515. Volkswagen intentionally concealed that the CleanDiesel engine systems  
12 were not EPA-compliant and used a "defeat device," or acted with reckless disregard  
13 for the truth, and denied Plaintiff and the other Class members information that is  
14 highly relevant to their purchasing decision.

15          516. Volkswagen further affirmatively misrepresented to Plaintiff in  
16 advertising and other forms of communication, including standard and uniform  
17 material provided with each car, that the Affected Vehicles it was selling were new,  
18 had no significant defects, complied with EPA regulations and would perform and  
19 operate properly when driven in normal usage.

20          517. Volkswagen knew these representations were false when made.

21          518. The Affected Vehicles purchased or leased by Plaintiff and the other  
22 Class members were, in fact, defective, non-EPA-compliant, unsafe, and unreliable  
23 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
24 system, as alleged herein.

25          519. Volkswagen had a duty to disclose that these Affected Vehicles were  
26 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
27 functions of the Affected Vehicles would be rendered inoperative due to the "defeat  
28 device" installed in the defective CleanDiesel engine system, because Plaintiff and the

1 other Class members relied on Volkswagen's material representations that the  
2 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
3 and free from defects.

4 520. The aforementioned concealment was material because if it had been  
5 disclosed Plaintiff and the other Class members would not have bought or leased the  
6 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
7 they paid.

8 521. The aforementioned representations were material because they were  
9 facts that would typically be relied on by a person purchasing or leasing a new motor  
10 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
11 false because it knew that it had to use the "defeat device" in order for Affected  
12 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
13 false statements in order to sell Affected Vehicles.

14 522. Plaintiff and the other Class members relied on Volkswagen's reputation  
15 – along with Volkswagen's failure to disclose the faulty and defective nature of the  
16 CleanDiesel engine system and Volkswagen's affirmative assurance that its Affected  
17 Vehicles were safe and reliable, and other similar false statements – in purchasing or  
18 leasing Volkswagen's Affected Vehicles.

19 523. As a result of their reliance, Plaintiff and the other Class members have  
20 been injured in an amount to be proven at trial, including, but not limited to, their lost  
21 benefit of the bargain and overpayment at the time of purchase or lease and/or the  
22 diminished value of their Affected Vehicles.

23 524. Volkswagen's conduct was knowing, intentional, with malice,  
24 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
25 Plaintiff and the other Class members. Plaintiff and the other Class members are  
26 therefore entitled to an award of punitive damages.

**L. Claims Brought on Behalf of the Georgia Subclass**

**COUNT I  
VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT  
(GA. CODE ANN. § 10-1-390, *et seq.*)**

525. Plaintiff John Brown ("Plaintiff," for purposes of all Georgia Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

526. Plaintiffs intend to assert a claim under the Georgia Fair Business Practices Act ("Georgia FBPA") which declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, GA. CODE. ANN. § 10-1-393(a), including but not limited to "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised." GA. CODE. ANN. § 10-1-393(b). Plaintiffs will make a demand in satisfaction of GA. CODE. ANN. § 10-1-399, and may amend this Complaint to assert claims under the Georgia FBPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

**COUNT II  
VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE  
PRACTICES ACT  
(GA. CODE ANN. § 10-1-370, *et seq.*)**

527. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

528. This claim is brought only on behalf of the Georgia Subclass.

529. Volkswagen, Plaintiff, and the Georgia Subclass are "persons" within the meaning of Georgia Uniform Deceptive Trade Practices Act ("Georgia UDTPA"), GA. CODE. ANN. § 10-1-371(5).

1           530. The Georgia UDTPA prohibits “deceptive trade practices,” which include  
2 the “misrepresentation of standard or quality of goods or services,” and “engaging in  
3 any other conduct which similarly creates a likelihood of confusion or of  
4 misunderstanding.” GA. CODE. ANN. § 10-1-372(a). By fraudulently installing the  
5 “defeat device” to make it appear that its CleanDiesel engine systems complied with  
6 EPA regulations, Volkswagen engaged in deceptive trade practices prohibited by the  
7 Georgia UDTPA.

8           531. In the course of its business, Volkswagen installed the “defeat device”  
9 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
10 and otherwise engaged in activities with a tendency or capacity to deceive.  
11 Volkswagen also engaged in unlawful trade practices by employing deception,  
12 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
13 omission of any material fact with intent that others rely upon such concealment,  
14 suppression or omission, in connection with the sale of Affected Vehicles.

15           532. Volkswagen has known of its use of the “defeat device” and the true  
16 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
17 information until recently.

18           533. Volkswagen was also aware that it valued profits over environmental  
19 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
20 distributing vehicles throughout the United States that did not comply with EPA  
21 regulations. Volkswagen concealed this information as well.

22           534. By failing to disclose and by actively concealing the “defeat device” and  
23 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
24 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
25 by presenting itself as a reputable manufacturer that valued safety, environmental  
26 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
27  
28

1 Volkswagen engaged in deceptive business practices in violation of the Georgia  
2 UDTPA.

3 535. In the course of Volkswagen's business, it willfully failed to disclose and  
4 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
5 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
6 compounded the deception by repeatedly asserting that the Affected Vehicles were  
7 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
8 be a reputable manufacturer that valued safety, environmental cleanliness and  
9 efficiency, and stood behind its vehicles once they are on the road.

10 536. Volkswagen's unfair or deceptive acts or practices were likely to and did  
11 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
12 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
13 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
14 and the true value of the Affected Vehicles.

15 537. Volkswagen intentionally and knowingly misrepresented material facts  
16 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Georgia  
17 Subclass.

18 538. Volkswagen knew or should have known that its conduct violated the  
19 Georgia UDTPA.

20 539. As alleged above, Volkswagen made material statements about the safety,  
21 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
22 and Audi brands that were either false or misleading.

23 540. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
24 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
25 cleanliness and integrity at Volkswagen, because Volkswagen:

- 26 a. Possessed exclusive knowledge that it valued profits  
27 over environmental cleanliness, efficiency, and  
28 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;



- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

541. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

542. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Georgia Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

543. Plaintiffs and the Georgia Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

544. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Georgia UDTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of diminished

1 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
2 practices made in the course of Volkswagen's business.

3 545. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
4 to the general public. Volkswagen's unlawful acts and practices complained of herein  
5 affect the public interest.

6 546. As a direct and proximate result of Volkswagen's violations of the  
7 Georgia UDTPA, Plaintiffs and the Georgia Subclass have suffered injury-in-fact  
8 and/or actual damage.

9 547. Plaintiffs seek an order enjoining Volkswagen's unfair, unlawful, and/or  
10 deceptive practices, attorneys' fees, and any other just and proper relief available  
11 under the Georgia UDTPA per GA. CODE. ANN § 10-1-373.

### 12 **COUNT III** 13 **FRAUD BY CONCEALMENT**

14 548. Plaintiff realleges and incorporates by reference all paragraphs as though  
15 fully set forth herein.

16 549. This claim is brought on behalf of the Georgia Subclass.

17 550. Volkswagen intentionally concealed and suppressed material facts  
18 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
19 notwithstanding references in the very model names of the subject vehicles as  
20 "CleanDiesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen  
21 engaged in a secret scheme to evade federal and state vehicle emissions standards by  
22 installing software designed to conceal its vehicles' emissions of the pollutant nitrogen  
23 oxide, which contributes to the creation of ozone and smog. The software installed on  
24 the vehicles at issue was designed nefariously to kick-in during emissions certification  
25 testing, such that the vehicles would show far lower emissions than when actually  
26 operating on the road. The result was what Volkswagen intended: vehicles passed  
27 emissions certifications by way of deliberately induced false readings. Reportedly,  
28

1 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
2 vehicles at up to 40 times applicable standards.

3 551. Plaintiff and Georgia Subclass members reasonably relied upon  
4 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
5 representations were false and gravely misleading. As alleged herein, Volkswagen  
6 employed extremely sophisticated methods of deception. Plaintiff and Georgia  
7 Subclass members did not, and could not, unravel Volkswagen's deception on their  
8 own.

9 552. Volkswagen concealed and suppressed material facts concerning what is  
10 evidently the true culture of Volkswagen – one characterized by an emphasis on  
11 profits and sales above compliance with federal and state clean air laws, and emissions  
12 regulations that are meant to protect the public and consumers. It also emphasized  
13 profits and sales over the trust that Plaintiff and Georgia Subclass members placed in  
14 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
15 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
16 intentional manipulation of the system. That's just a whole other level of not only  
17 lying to the government, but also lying to your consumer. People buy diesel cars from  
18 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
19 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
20 want to be spewing noxious gases into the environment."

21 553. Necessarily, Volkswagen also took steps to ensure that its employees did  
22 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
23 Georgia Subclass members. Volkswagen did so in order to boost the reputations of its  
24 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
25 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
26 with applicable law, including federal and state clean air laws and emissions  
27 regulations, and that its vehicles likewise comply with applicable law and regulations.  
28

1 Volkswagen's false representations were material to consumers, both because they  
2 concerned the quality of the Affected Vehicles, including their compliance with  
3 applicable federal and state laws and regulations regarding clean air and emissions,  
4 and also because the representations played a significant role in the value of the  
5 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Georgia  
6 Subclass members, highly valued that the vehicles they were purchasing or leasing  
7 were *clean* diesel cars, and they paid accordingly.

8 554. Volkswagen had a duty to disclose its emissions scheme because  
9 knowledge of the scheme and its details were known and/or accessible only to  
10 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
11 maintenance of its scheme, and because Volkswagen knew the facts were not known  
12 to or reasonably discoverable by Plaintiff or Georgia Subclass members. Volkswagen  
13 also had a duty to disclose because it made general affirmative representations about  
14 the qualities of its vehicles with respect to emissions standards, starting with  
15 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
16 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
17 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
18 actual philosophy with respect to compliance with federal and state clean air laws and  
19 emissions regulations, and its actual practices with respect to the vehicles at issue.  
20 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
21 disclose not just the partial truth, but the entire truth. These omitted and concealed  
22 facts were material because they directly impact the value of the Affected Vehicles  
23 purchased or leased by Plaintiff and Georgia Subclass members. Whether a  
24 manufacturer's products comply with federal and state clean air laws and emissions  
25 regulations, and whether that manufacturer tells the truth with respect to such  
26 compliance or non-compliance, are material concerns to a consumer, including with  
27 respect to the emissions certification testing their vehicles must pass. Volkswagen  
28

1 represented to Plaintiff and Georgia Subclass members that they were purchasing  
2 *clean* diesel vehicles, and certification testing appeared to confirm this – except that,  
3 secretly, Volkswagen had subverted the testing process thoroughly.

4 555. Volkswagen actively concealed and/or suppressed these material facts, in  
5 whole or in part, to pad and protect its profits and to avoid the perception that its  
6 vehicles did not or could not comply with federal and state laws governing clean air  
7 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
8 money, and it did so at the expense of Plaintiff and Georgia Subclass members.

9 556. On information and belief, Volkswagen has still not made full and  
10 adequate disclosures, and continues to defraud Plaintiff and Georgia Subclass  
11 members by concealing material information regarding the emission qualities of its  
12 vehicles and its emissions scheme.

13 557. Plaintiff and Georgia Subclass members were unaware of the omitted  
14 material facts referenced herein, and they would not have acted as they did if they had  
15 known of the concealed and/or suppressed facts, in that they would not have  
16 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
17 not have continued to drive their heavily polluting vehicles, or would have taken other  
18 affirmative steps in light of the information concealed from them. Plaintiff’s and  
19 Georgia Subclass Members’ actions were justified. Volkswagen was in exclusive  
20 control of the material facts, and such facts were not known to the public, Plaintiff, or  
21 Georgia Subclass members.

22 558. Because of the concealment and/or suppression of the facts, Plaintiff and  
23 Georgia Subclass members have sustained damage because they own vehicles that are  
24 diminished in value as a result of Volkswagen’s concealment of the true quality and  
25 quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the  
26 actual emission qualities and quantities of hundreds of thousands of Volkswagen- and  
27 Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate  
28

1 policies. Had Plaintiff and Georgia Subclass members been aware of Volkswagen's  
2 emissions scheme, and the company's callous disregard for compliance with  
3 applicable federal and state laws and regulations, Plaintiff and Georgia Subclass  
4 members who purchased or leased new or previously owned vehicles would have paid  
5 less for their vehicles or would not have purchased or leased them at all.

6 559. The value of Plaintiff's and Georgia Subclass members' vehicles has  
7 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
8 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
9 to Plaintiff's and Georgia Subclass members' vehicles and made any reasonable  
10 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
11 otherwise would have been fair market value for the vehicles. In addition, Class  
12 members are entitled to damages for loss of use, costs of additional fuel, costs of  
13 unused warranties, and other damages to be proved at trial.

14 560. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
15 damages in an amount to be proven at trial.

16 561. Volkswagen's acts were done wantonly, maliciously, oppressively,  
17 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Georgia  
18 Subclass members' rights and the representations that Volkswagen made to them, in  
19 order to enrich Volkswagen. To the extent permitted under applicable law,  
20 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
21 sufficient to deter such conduct in the future, which amount is to be determined  
22 according to proof.

23 **COUNT IV**  
24 **BREACH OF CONTRACT**  
**(Based on Georgia Law)**

25 562. Plaintiff incorporates by reference all preceding allegations as though  
26 fully set forth herein.  
27  
28

1           563. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
2 owned vehicle purchasers in the Georgia Subclass.

3           564. Volkswagen's misrepresentations and omissions alleged herein, including  
4 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
5 defect and/or defective design as alleged herein, caused Plaintiff and the other Georgia  
6 Subclass members to make their purchases or leases of their Affected Vehicles.  
7 Absent those misrepresentations and omissions, Plaintiff and the other Georgia  
8 Subclass members would not have purchased or leased these Affected Vehicles, would  
9 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
10 would have purchased or leased less expensive alternative vehicles that did not contain  
11 the CleanDiesel engine system and which were not marketed as including such a  
12 system. Accordingly, Plaintiff and the other Georgia Subclass members overpaid for  
13 their Affected Vehicles and did not receive the benefit of their bargain.

14           565. Each and every sale or lease of an Affected Vehicle by an authorized  
15 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
16 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
17 other Georgia Subclass members defective Affected Vehicles and by misrepresenting  
18 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
19 defective design, including information known to Volkswagen rendering each  
20 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
21 equipped with a CleanDiesel engine system.

22           566. As a direct and proximate result of Volkswagen's breach of contract,  
23 Plaintiff and the Georgia Subclass have been damaged in an amount to be proven at  
24 trial, which shall include, but is not limited to, all compensatory damages, incidental  
25 and consequential damages, and other damages allowed by law.  
26  
27  
28



**M. Claims Brought on Behalf of the Hawaii Subclass**

**COUNT I  
UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW  
(HAW. REV. STAT. § 480, *ET SEQ.*)**

567. Plaintiff Christina Paolicchi (“Plaintiff,” for purposes of all Hawaii Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

568. This claim is brought only on behalf of the Hawaii Subclass.

569. Defendants are each a “person” under HAW. REV. STAT. § 480-1.

570. Class Members are “consumer[s]” as defined by HAW. REV. STAT. § 480-1, who purchased or leased one or more Affected Vehicles.

571. Volkswagen’s acts or practices as set forth above occurred in the conduct of trade or commerce.

572. The Hawaii Act § 480-2(a) prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce....” By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in unfair and deceptive trade practices prohibited by the Hawaii Act.

573. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive.

Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

574. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1           575. Volkswagen was also aware that it valued profits over environmental  
2 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
3 distributing vehicles throughout the United States that did not comply with EPA  
4 regulations. Volkswagen concealed this information as well.

5           576. By failing to disclose and by actively concealing the “defeat device” and  
6 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
7 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
8 by presenting itself as a reputable manufacturer that valued safety, environmental  
9 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
10 Volkswagen engaged in unfair and deceptive business practices in violation of the  
11 Hawaii Act.

12           577. In the course of Volkswagen’s business, it willfully failed to disclose and  
13 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
14 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
15 compounded the deception by repeatedly asserting that the Affected Vehicles were  
16 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
17 be a reputable manufacturer that valued safety, environmental cleanliness and  
18 efficiency, and stood behind its vehicles once they are on the road.

19           578. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
20 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
21 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
22 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
23 and the true value of the Affected Vehicles.

24           579. Volkswagen intentionally and knowingly misrepresented material facts  
25 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Hawaii  
26 Subclass.

1           580. Volkswagen knew or should have known that its conduct violated the  
2 Hawaii Act.

3           581. As alleged above, Volkswagen made material statements about the safety,  
4 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
5 and Audi brands that were either false or misleading.

6           582. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
7 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
8 cleanliness and integrity at Volkswagen, because Volkswagen:

- 9           a. Possessed exclusive knowledge that it valued profits  
10           over environmental cleanliness, efficiency, and  
11           lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 12           b. Intentionally concealed the foregoing from Plaintiffs;  
13           and/or
- 14           c. Made incomplete representations about the safety,  
15           cleanliness, efficiency and reliability of the Affected  
16           Vehicles generally, and the use of the “defeat device”  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
17           facts from Plaintiffs that contradicted these  
representations.

18           583. Because Volkswagen fraudulently concealed the “defeat device” and the  
19 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
20 of negative publicity once the use of the “defeat device” and true characteristics of the  
21 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
22 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
23 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
24 would be.

25           584. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
26 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
27 and the Hawaii Subclass. A vehicle made by a reputable manufacturer of  
28 environmentally friendly vehicles is worth more than an otherwise comparable vehicle

1 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
2 its polluting engines rather than promptly remedying them.

3 585. Plaintiffs and the Hawaii Subclass suffered ascertainable loss caused by  
4 Volkswagen's misrepresentations and its concealment of and failure to disclose  
5 material information. Class members who purchased the Affected Vehicles either  
6 would have paid less for their vehicles or would not have purchased or leased them at  
7 all.

8 586. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
9 to refrain from unfair and deceptive acts or practices under the Hawaii UDTPA. All  
10 owners of Affected Vehicles suffered ascertainable loss in the form of diminished  
11 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
12 practices made in the course of Volkswagen's business

13 .587. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
14 to the general public. Volkswagen's unlawful acts and practices complained of herein  
15 affect the public interest.

16 588. As a direct and proximate result of Volkswagen's violations of the  
17 Hawaii Act, Plaintiffs and the Hawaii Subclass have suffered injury-in-fact and/or  
18 actual damage.

19 589. Pursuant to HAW. REV. STAT. § 480-13, Plaintiffs and the Hawaii  
20 Subclass seek monetary relief against Volkswagen measured as the greater of (a)  
21 \$1,000 and (b) threefold actual damages in an amount to be determined at trial.

22 590. Under HAW. REV. STAT. § 480-13.5, Plaintiffs seek an additional award  
23 against Volkswagen of up to \$10,000 for each violation directed at a Hawaiian elder.  
24 Volkswagen knew or should have known that its conduct was directed to one or more  
25 Class Members who are elders. Volkswagen's conduct caused one or more of these  
26 elders to suffer a substantial loss of property set aside for retirement or for personal or  
27 family care and maintenance, or assets essential to the health or welfare of the elder.  
28

1 One or more Hawaii Subclass Members who are elders are substantially more  
2 vulnerable to Volkswagen's conduct because of age, poor health or infirmity, impaired  
3 understanding, restricted mobility, or disability, and each of them suffered substantial  
4 physical, emotional, or economic damage resulting from Volkswagen's conduct.

5 **COUNT II**  
6 **FRAUD BY CONCEALMENT**

7 591. Plaintiffs reallege and incorporate by reference all paragraphs as though  
8 fully set forth herein.

9 592. This claim is brought on behalf of the Hawaii Subclass.

10 593. Volkswagen intentionally concealed and suppressed material facts  
11 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
12 notwithstanding references in the very model names of the subject vehicles as "Clean  
13 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
14 secret scheme to evade federal and state vehicle emissions standards by installing  
15 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
16 which contributes to the creation of ozone and smog. The software installed on the  
17 vehicles at issue was designed nefariously to kick-in during emissions certification  
18 testing, such that the vehicles would show far lower emissions than when actually  
19 operating on the road. The result was what Volkswagen intended: vehicles passed  
20 emissions certifications by way of deliberately induced false readings. Reportedly,  
21 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
22 vehicles at up to 40 times applicable standards.

23 594. Plaintiff and Hawaii Subclass members reasonably relied upon  
24 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
25 representations were false and gravely misleading. As alleged herein, Volkswagen  
26 employed extremely sophisticated methods of deception. Plaintiff and Hawaii  
27 Subclass members did not, and could not, unravel Volkswagen's deception on their  
28 own.

1           595. Volkswagen concealed and suppressed material facts concerning what is  
2 evidently the true culture of Volkswagen—one characterized by an emphasis on  
3 profits and sales above compliance with federal and state clean air laws, and emissions  
4 regulations that are meant to protect the public and consumers. It also emphasized  
5 profits and sales over the trust that Plaintiff and Hawaii Subclass members placed in  
6 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
7 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
8 intentional manipulation of the system. That’s just a whole other level of not only  
9 lying to the government, but also lying to your consumer. People buy diesel cars from  
10 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
11 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
12 want to be spewing noxious gases into the environment.”

13           596. Necessarily, Volkswagen also took steps to ensure that its employees did  
14 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
15 Hawaii Subclass members. Volkswagen did so in order to boost the reputations of its  
16 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
17 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
18 with applicable law, including federal and state clean air laws and emissions  
19 regulations, and that its vehicles likewise comply with applicable law and regulations.  
20 Volkswagen’s false representations were material to consumers, both because they  
21 concerned the quality of the Affected Vehicles, including their compliance with  
22 applicable federal and state laws and regulations regarding clean air and emissions,  
23 and also because the representations played a significant role in the value of the  
24 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Hawaii  
25 Subclass members, highly valued that the vehicles they were purchasing or leasing  
26 were *clean* diesel cars, and they paid accordingly.

1           597. Volkswagen had a duty to disclose its emissions scheme because  
2 knowledge of the scheme and its details were known and/or accessible only to  
3 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
4 maintenance of its scheme, and because Volkswagen knew the facts were not known  
5 to or reasonably discoverable by Plaintiff or Hawaii Subclass members. Volkswagen  
6 also had a duty to disclose because it made general affirmative representations about  
7 the qualities of its vehicles with respect to emissions standards, starting with  
8 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
9 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
10 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
11 actual philosophy with respect to compliance with federal and state clean air laws and  
12 emissions regulations, and its actual practices with respect to the vehicles at issue.  
13 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
14 disclose not just the partial truth, but the entire truth. These omitted and concealed  
15 facts were material because they directly impact the value of the Affected Vehicles  
16 purchased or leased by Plaintiff and Hawaii Subclass members. Whether a  
17 manufacturer's products comply with federal and state clean air laws and emissions  
18 regulations, and whether that manufacturer tells the truth with respect to such  
19 compliance or non-compliance, are material concerns to a consumer, including with  
20 respect to the emissions certification testing their vehicles must pass. Volkswagen  
21 represented to Plaintiff and Hawaii Subclass members that they were purchasing *clean*  
22 diesel vehicles, and certification testing appeared to confirm this—except that,  
23 secretly, Volkswagen had subverted the testing process thoroughly.

24           598. Volkswagen actively concealed and/or suppressed these material facts, in  
25 whole or in part, to pad and protect its profits and to avoid the perception that its  
26 vehicles did not or could not comply with federal and state laws governing clean air  
27  
28



1 and emissions, which perception would hurt the brand's image and cost Volkswagen  
2 money, and it did so at the expense of Plaintiff and Hawaii Subclass members.

3 599. On information and belief, Volkswagen has still not made full and  
4 adequate disclosures, and continues to defraud Plaintiff and Hawaii Subclass members  
5 by concealing material information regarding the emissions qualities of its vehicles  
6 and its emissions scheme.

7 600. Plaintiff and Hawaii Subclass members were unaware of the omitted  
8 material facts referenced herein, and they would not have acted as they did if they had  
9 known of the concealed and/or suppressed facts, in that they would not have  
10 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
11 not have continued to drive their heavily polluting vehicles, or would have taken other  
12 affirmative steps in light of the information concealed from them. Plaintiff's and  
13 Hawaii Subclass members' actions were justified. Volkswagen was in exclusive  
14 control of the material facts, and such facts were not known to the public, Plaintiff, or  
15 Hawaii Subclass members.

16 601. Because of the concealment and/or suppression of the facts, Plaintiff and  
17 Hawaii Subclass members have sustained damage because they own vehicles that are  
18 diminished in value as a result of Volkswagen's concealment of the true quality and  
19 quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the  
20 actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and  
21 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
22 policies. Had Plaintiff and Hawaii Subclass members been aware of Volkswagen's  
23 emissions scheme, and the company's callous disregard for compliance with  
24 applicable federal and state laws and regulations, Plaintiff and Hawaii Subclass  
25 members who purchased or leased new or previously owned vehicles would have paid  
26 less for their vehicles or would not have purchased or leased them at all.

602. The value of Plaintiff's and Hawaii Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Hawaii Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

603. Accordingly, Volkswagen is liable to Plaintiff and Hawaii Subclass members for damages in an amount to be proven at trial.

604. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Hawaii Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON HAWAII LAW)**

605. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

606. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Hawaii Subclass.

607. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Hawaii Subclass members to make their purchases or leases of their Affected Vehicles.

1 Absent those misrepresentations and omissions, Plaintiff and the other Hawaii  
 2 Subclass members would not have purchased or leased these Affected Vehicles, would  
 3 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
 4 would have purchased or leased less expensive alternative vehicles that did not contain  
 5 the CleanDiesel engine system and which were not marketed as including such a  
 6 system. Accordingly, Plaintiff and the other Hawaii Subclass members overpaid for  
 7 their Affected Vehicles and did not receive the benefit of their bargain.

8 608. Each and every sale or lease of an Affected Vehicle by an authorized  
 9 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 10 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 11 other Hawaii Subclass members defective Affected Vehicles and by misrepresenting  
 12 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 13 defective design, including information known to Volkswagen rendering each  
 14 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 15 equipped with a CleanDiesel engine system.

16 609. As a direct and proximate result of Volkswagen's breach of contract,  
 17 Plaintiff and the Hawaii Subclass have been damaged in an amount to be proven at  
 18 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 19 and consequential damages, and other damages allowed by law.

20 **N. Claims Brought on Behalf of the Idaho Subclass**

21 **COUNT I**  
 22 **VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT**  
**(IDAHO CIV. CODE § 48-601, ET SEQ.)**

23 610. Plaintiff Adam Frugoli ("Plaintiff," for purposes of all Idaho Subclass  
 24 Counts) incorporates by reference all preceding allegations as though fully set forth  
 25 herein.

26 611. This claim is brought only on behalf of the Idaho Subclass.  
 27  
 28

1           612. Defendants are each a “person” under the Idaho Consumer Protection Act  
2 (“Idaho CPA”), IDAHO CIV. CODE § 48-602(1).

3           613. Volkswagen’s acts or practices as set forth above occurred in the conduct  
4 of “trade” or “commerce” under IDAHO CIV. CODE § 48-602(2).

5           614. Volkswagen participated in misleading, false, or deceptive acts that  
6 violated the Idaho CPA. By fraudulently installing the “defeat device” to make it  
7 appear that its CleanDiesel engine systems complied with EPA regulations,  
8 Volkswagen engaged in deceptive business practices prohibited by the Idaho CPA,  
9 including: (1) representing that the Affected Vehicles have characteristics, uses, and  
10 benefits which they do not have; (2) representing that the Affected Vehicles are of a  
11 particular standard, quality, and grade when they are not; (3) advertising the Affected  
12 Vehicles with the intent not to sell them as advertised; (4) engaging in acts or practices  
13 which are otherwise misleading, false, or deceptive to the consumer; and (5) engaging  
14 in any unconscionable method, act or practice in the conduct of trade or commerce.  
15 *See* IDAHO CIV. CODE § 48-603.

16           615. In the course of its business, Volkswagen installed the “defeat device”  
17 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
18 and otherwise engaged in activities with a tendency or capacity to deceive.  
19 Volkswagen also engaged in unlawful trade practices by employing deception,  
20 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
21 omission of any material fact with intent that others rely upon such concealment,  
22 suppression or omission, in connection with the sale of Affected Vehicles.

23           616. Volkswagen has known of its use of the “defeat device” and the true  
24 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
25 information until recently.

26           617. Volkswagen was also aware that it valued profits over environmental  
27 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
28

1 distributing vehicles throughout the United States that did not comply with EPA  
2 regulations. Volkswagen concealed this information as well.

3 618. By failing to disclose and by actively concealing the “defeat device” and  
4 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
5 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
6 by presenting itself as a reputable manufacturer that valued safety, environmental  
7 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
8 Volkswagen engaged in deceptive business practices in violation of the Idaho CPA.

9 619. In the course of Volkswagen’s business, it willfully failed to disclose and  
10 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
11 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
12 compounded the deception by repeatedly asserting the Affected Vehicles were safe,  
13 reliable, environmentally clean, efficient, and of high quality, and by claiming to be a  
14 reputable manufacturer that valued safety, environmental cleanliness and efficiency,  
15 and stood behind its vehicles once they are on the road.

16 620. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
17 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
18 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
19 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
20 and the true value of the Affected Vehicles.

21 621. Volkswagen intentionally and knowingly misrepresented material facts  
22 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Idaho  
23 Subclass.

24 622. Volkswagen knew or should have known that its conduct violated the  
25 Idaho CPA.  
26  
27  
28

1           623. As alleged above, Volkswagen made material statements about the safety,  
2 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
3 and Audi brands that were either false or misleading.

4           624. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
5 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
6 cleanliness and integrity at Volkswagen, because Volkswagen:

- 7           a. Possessed exclusive knowledge that it valued profits  
8 over environmental cleanliness, efficiency, and  
9 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 10          b. Intentionally concealed the foregoing from Plaintiffs;  
11 and/or
- 12          c. Made incomplete representations about the safety,  
13 cleanliness, efficiency and reliability of the Affected  
14 Vehicles generally, and the use of the “defeat device”  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
facts from Plaintiffs that contradicted these  
representations.

15           625. Because Volkswagen fraudulently concealed the “defeat device” and the  
16 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
17 of negative publicity once the use of the “defeat device” and true characteristics of the  
18 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
19 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
20 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
21 would be.

22           626. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
23 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
24 and the Idaho Subclass. A vehicle made by a reputable manufacturer of  
25 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
26 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
27 its polluting engines rather than promptly remedying them.  
28

1           627. Plaintiffs and the Idaho Subclass suffered ascertainable loss caused by  
2 Volkswagen's misrepresentations and its concealment of and failure to disclose  
3 material information. Class members who purchased the Affected Vehicles either  
4 would have paid less for their vehicles or would not have purchased or leased them at  
5 all.

6           628. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
7 to refrain from unfair and deceptive acts or practices under the Idaho CPA. All  
8 owners of Affected Vehicles suffered ascertainable loss in the Illinois form of the  
9 diminished value of their vehicles as a result of Volkswagen's deceptive and unfair  
10 acts and practices made in the course of Volkswagen's business.

11           629. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
12 to the general public. Volkswagen's unlawful acts and practices complained of herein  
13 affect the public interest.

14           630. As a direct and proximate result of Volkswagen's violations of the Idaho  
15 CPA, Plaintiffs and the Idaho Subclass have suffered injury-in-fact and/or actual  
16 damage.

17           631. Pursuant to IDAHO CODE § 48-608, Plaintiffs and the Idaho Subclass seek  
18 monetary relief against Volkswagen measured as the greater of (a) actual damages in  
19 an amount to be determined at trial and (b) statutory damages in the amount of \$1,000  
20 for each Plaintiff and each Idaho Subclass member.

21           632. Plaintiffs also seek an order enjoining Volkswagen's unfair, unlawful,  
22 and/or deceptive practices, attorneys' fees, and any other just and proper relief  
23 available under the Idaho CPA.

24           633. Plaintiffs and Idaho Subclass Members also seek punitive damages  
25 against Volkswagen because Volkswagen's conduct evidences an extreme deviation  
26 from reasonable standards. Volkswagen flagrantly, maliciously, and fraudulently  
27 misrepresented the cleanliness, efficiency and reliability of the Affected Vehicles,  
28



1 deceived Class Members, and concealed material facts that only they knew, all to  
2 avoid the expense and public relations nightmare of its vehicles were profound  
3 polluters when it repeatedly promised Class Members they were clean. Volkswagen's  
4 unlawful conduct constitutes malice, oppression, and fraud warranting punitive  
5 damages.

6 **COUNT II**  
7 **FRAUD BY CONCEALMENT**

8 634. Plaintiffs reallege and incorporate by reference all paragraphs as though  
9 fully set forth herein.

10 635. This claim is brought on behalf of the Idaho Subclass.

11 636. Volkswagen intentionally concealed and suppressed material facts  
12 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
13 notwithstanding references in the very model names of the subject vehicles as "Clean  
14 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
15 secret scheme to evade federal and state vehicle emissions standards by installing  
16 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
17 which contributes to the creation of ozone and smog. The software installed on the  
18 vehicles at issue was designed nefariously to kick-in during emissions certification  
19 testing, such that the vehicles would show far lower emissions than when actually  
20 operating on the road. The result was what Volkswagen intended: vehicles passed  
21 emissions certifications by way of deliberately induced false readings. Reportedly,  
22 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
23 vehicles at up to 40 times applicable standards.

24 637. Plaintiff and Idaho Subclass members reasonably relied upon  
25 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
26 representations were false and gravely misleading. As alleged herein, Volkswagen  
27 employed extremely sophisticated methods of deception. Plaintiff and Idaho Subclass  
28 members did not, and could not, unravel Volkswagen's deception on their own.

1           638. Volkswagen concealed and suppressed material facts concerning what is  
2 evidently the true culture of Volkswagen—one characterized by an emphasis on  
3 profits and sales above compliance with federal and state clean air laws, and emissions  
4 regulations that are meant to protect the public and consumers. It also emphasized  
5 profits and sales over the trust that Plaintiff and Idaho Subclass members placed in its  
6 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
7 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
8 intentional manipulation of the system. That’s just a whole other level of not only  
9 lying to the government, but also lying to your consumer. People buy diesel cars from  
10 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
11 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
12 want to be spewing noxious gases into the environment.”

13           639. Necessarily, Volkswagen also took steps to ensure that its employees did  
14 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
15 Idaho Subclass members. Volkswagen did so in order to boost the reputations of its  
16 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
17 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
18 with applicable law, including federal and state clean air laws and emissions  
19 regulations, and that its vehicles likewise comply with applicable law and regulations.  
20 Volkswagen’s false representations were material to consumers, both because they  
21 concerned the quality of the Affected Vehicles, including their compliance with  
22 applicable federal and state laws and regulations regarding clean air and emissions,  
23 and also because the representations played a significant role in the value of the  
24 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Idaho  
25 Subclass members, highly valued that the vehicles they were purchasing or leasing  
26 were *clean* diesel cars, and they paid accordingly.

1           640. Volkswagen had a duty to disclose its emissions scheme because  
2 knowledge of the scheme and its details were known and/or accessible only to  
3 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
4 maintenance of its scheme, and because Volkswagen knew the facts were not known  
5 to or reasonably discoverable by Plaintiff or Idaho Subclass members. Volkswagen  
6 also had a duty to disclose because it made general affirmative representations about  
7 the qualities of its vehicles with respect to emissions standards, starting with  
8 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
9 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
10 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
11 actual philosophy with respect to compliance with federal and state clean air laws and  
12 emissions regulations, and its actual practices with respect to the vehicles at issue.  
13 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
14 disclose not just the partial truth, but the entire truth. These omitted and concealed  
15 facts were material because they directly impact the value of the Affected Vehicles  
16 purchased or leased by Plaintiff and Idaho Subclass members. Whether a  
17 manufacturer's products comply with federal and state clean air laws and emissions  
18 regulations, and whether that manufacturer tells the truth with respect to such  
19 compliance or non-compliance, are material concerns to a consumer, including with  
20 respect to the emissions certification testing their vehicles must pass. Volkswagen  
21 represented to Plaintiff and Idaho Subclass members that they were purchasing *clean*  
22 diesel vehicles, and certification testing appeared to confirm this—except that,  
23 secretly, Volkswagen had subverted the testing process thoroughly.

24           641. Volkswagen actively concealed and/or suppressed these material facts, in  
25 whole or in part, to pad and protect its profits and to avoid the perception that its  
26 vehicles did not or could not comply with federal and state laws governing clean air  
27  
28

1 and emissions, which perception would hurt the brand's image and cost Volkswagen  
2 money, and it did so at the expense of Plaintiff and Idaho Subclass members.

3 642. On information and belief, Volkswagen has still not made full and  
4 adequate disclosures, and continues to defraud Plaintiff and Idaho Subclass members  
5 by concealing material information regarding the emissions qualities of its vehicles  
6 and its emissions scheme.

7 643. Plaintiff and Idaho Subclass members were unaware of the omitted  
8 material facts referenced herein, and they would not have acted as they did if they had  
9 known of the concealed and/or suppressed facts, in that they would not have  
10 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
11 not have continued to drive their heavily polluting vehicles, or would have taken other  
12 affirmative steps in light of the information concealed from them. Plaintiff's and  
13 Idaho Subclass members' actions were justified. Volkswagen was in exclusive control  
14 of the material facts, and such facts were not known to the public, Plaintiff, or Idaho  
15 Subclass members.

16 644. Because of the concealment and/or suppression of the facts, Plaintiff and  
17 Idaho Subclass members have sustained damage because they own vehicles that are  
18 diminished in value as a result of Volkswagen's concealment of the true quality and  
19 quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the  
20 actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and  
21 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
22 policies. Had Plaintiff and Idaho Subclass members been aware of Volkswagen's  
23 emissions scheme, and the company's callous disregard for compliance with  
24 applicable federal and state laws and regulations, Plaintiff and Idaho Subclass  
25 members who purchased or leased new or previously owned vehicles would have paid  
26 less for their vehicles or would not have purchased or leased them at all.

645. The value of Plaintiff's and Idaho Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Idaho Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

646. Accordingly, Volkswagen is liable to Plaintiff and Idaho Subclass members for damages in an amount to be proven at trial.

647. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Idaho Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON IDAHO LAW)**

648. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

649. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Idaho Subclass.

650. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Idaho Subclass members to make their purchases or leases of their Affected Vehicles.

1 Absent those misrepresentations and omissions, Plaintiff and the other Idaho Subclass  
 2 members would not have purchased or leased these Affected Vehicles, would not have  
 3 purchased or leased these Affected Vehicles at the prices they paid, and/or would have  
 4 purchased or leased less expensive alternative vehicles that did not contain the  
 5 CleanDiesel engine system and which were not marketed as including such a system.  
 6 Accordingly, Plaintiff and the other Idaho Subclass members overpaid for their  
 7 Affected Vehicles and did not receive the benefit of their bargain.

8 651. Each and every sale or lease of an Affected Vehicle by an authorized  
 9 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 10 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 11 other Idaho Subclass members defective Affected Vehicles and by misrepresenting or  
 12 failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 13 defective design, including information known to Volkswagen rendering each  
 14 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 15 equipped with a CleanDiesel engine system.

16 652. As a direct and proximate result of Volkswagen's breach of contract,  
 17 Plaintiff and the Idaho Subclass have been damaged in an amount to be proven at trial,  
 18 which shall include, but is not limited to, all compensatory damages, incidental and  
 19 consequential damages, and other damages allowed by law.

20 **O. Claims Brought on Behalf of the Illinois Subclass**

21 **COUNT I**  
 22 **VIOLATION OF ILLINOIS CONSUMER FRAUD AND**  
 23 **DECEPTIVE BUSINESS PRACTICES ACT**  
**(815 ILCS 505/1, et seq. and 720 ILCS 295/1A)**

24 653. Plaintiff Tracey Rosen ("Plaintiff," for purposes of all Illinois Subclass  
 25 Counts) incorporates by reference all preceding allegations as though fully set forth  
 26 herein.

27 654. This claim is brought only on behalf of the Illinois Subclass.

1           655. Defendants are each a “person” as that term is defined in 815 ILCS  
2 505/1(c).

3           656. Plaintiff and the Illinois Subclass are “consumers” as that term is defined  
4 in 815 ILCS 505/1(e).

5           657. The Illinois Consumer Fraud and Deceptive Business Practices Act  
6 (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including but not  
7 limited to the use or employment of any deception, fraud, false pretense, false  
8 promise, misrepresentation or the concealment, suppression or omission of any  
9 material fact, with intent that others rely upon the concealment, suppression or  
10 omission of such material fact ... in the conduct of trade or commerce ... whether any  
11 person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

12           658. Volkswagen participated in misleading, false, or deceptive acts that  
13 violated the Illinois CFA. By fraudulently installing the “defeat device” to make it  
14 appear that its CleanDiesel engine systems complied with EPA regulations,  
15 Volkswagen engaged in deceptive business practices prohibited by the Illinois CFA.

16           659. In the course of its business, Volkswagen installed the “defeat device”  
17 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
18 and otherwise engaged in activities with a tendency or capacity to deceive.  
19 Volkswagen also engaged in unlawful trade practices by employing deception,  
20 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
21 omission of any material fact with intent that others rely upon such concealment,  
22 suppression or omission, in connection with the sale of Affected Vehicles.

23           660. Volkswagen has known of its use of the “defeat device” and the true  
24 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
25 information until recently.

26           661. Volkswagen was also aware that it valued profits over environmental  
27 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
28



1 distributing vehicles throughout the United States that did not comply with EPA  
2 regulations. Volkswagen concealed this information as well.

3 662. By failing to disclose and by actively concealing the “defeat device” and  
4 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
5 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
6 by presenting itself as a reputable manufacturer that valued safety, environmental  
7 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
8 Volkswagen engaged in unfair and deceptive business practices in violation of the  
9 Illinois CFA.

10 663. In the course of Volkswagen’s business, it willfully failed to disclose and  
11 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
12 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
13 compounded the deception by repeatedly asserting that the Affected Vehicles were  
14 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
15 be a reputable manufacturer that valued safety, environmental cleanliness and  
16 efficiency, and stood behind its vehicles once they are on the road.

17 664. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
18 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
19 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
20 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
21 and the true value of the Affected Vehicles.

22 665. Volkswagen intentionally and knowingly misrepresented material facts  
23 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Illinois  
24 Subclass.

25 666. Volkswagen knew or should have known that its conduct violated the  
26 Illinois CFA.

1           667. As alleged above, Volkswagen made material statements about the safety,  
2 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
3 and Audi brands that were either false or misleading.

4           668. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
5 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
6 cleanliness and integrity at Volkswagen, because Volkswagen:

- 7           a. Possessed exclusive knowledge that it valued profits  
8 over environmental cleanliness, efficiency, and  
9 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 10          b. Intentionally concealed the foregoing from Plaintiffs;  
11 and/or
- 12          c. Made incomplete representations about the safety,  
13 cleanliness, efficiency and reliability of the Affected  
14 Vehicles generally, and the use of the “defeat device”  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
facts from Plaintiffs that contradicted these  
representations.

15           669. Because Volkswagen fraudulently concealed the “defeat device” and the  
16 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
17 of negative publicity once the use of the “defeat device” and true characteristics of the  
18 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
19 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
20 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
21 would be.

22           670. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
23 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
24 and the Illinois Subclass. A vehicle made by a reputable manufacturer of  
25 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
26 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
27 its polluting engines rather than promptly remedying them.  
28

1           671. Plaintiffs and the Illinois Subclass suffered ascertainable loss caused by  
2 Volkswagen's misrepresentations and its concealment of and failure to disclose  
3 material information. Class members who purchased the Affected Vehicles either  
4 would have paid less for their vehicles or would not have purchased or leased them at  
5 all.

6           672. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
7 to refrain from unfair and deceptive acts or practices under the Illinois CFA. All  
8 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
9 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
10 practices made in the course of Volkswagen's business.

11           673. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
12 to the general public. Volkswagen's unlawful acts and practices complained of herein  
13 affect the public interest.

14           674. As a direct and proximate result of Volkswagen's violations of the  
15 Illinois CFA, Plaintiffs and the Illinois Subclass have suffered injury-in-fact and/or  
16 actual damage.

17           675. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Subclass seek  
18 monetary relief against Volkswagen in the amount of actual damages, as well as  
19 punitive damages because Volkswagen acted with fraud and/or malice and/or was  
20 grossly negligent.

21           676. Plaintiffs also seek an order enjoining Volkswagen's unfair and/or  
22 deceptive acts or practices, punitive damages, and attorneys' fees, and any other just  
23 and proper relief available under 815 ILCS § 505/1 *et seq.*

24                                   **COUNT II**  
25                                   **FRAUD BY CONCEALMENT**

26           677. Plaintiffs reallege and incorporate by reference all paragraphs as though  
27 fully set forth herein.

28           678. This claim is brought on behalf of the Illinois Subclass.

1           679. Volkswagen intentionally concealed and suppressed material facts  
2 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
3 notwithstanding references in the very model names of the subject vehicles as “Clean  
4 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
5 secret scheme to evade federal and state vehicle emissions standards by installing  
6 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
7 which contributes to the creation of ozone and smog. The software installed on the  
8 vehicles at issue was designed nefariously to kick-in during emissions certification  
9 testing, such that the vehicles would show far lower emissions than when actually  
10 operating on the road. The result was what Volkswagen intended: vehicles passed  
11 emissions certifications by way of deliberately induced false readings. Reportedly,  
12 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
13 vehicles at up to 40 times applicable standards.

14           680. Plaintiff and Illinois Subclass members reasonably relied upon  
15 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s  
16 representations were false and gravely misleading. As alleged herein, Volkswagen  
17 employed extremely sophisticated methods of deception. Plaintiff and Illinois  
18 Subclass members did not, and could not, unravel Volkswagen’s deception on their  
19 own.

20           681. Volkswagen concealed and suppressed material facts concerning what is  
21 evidently the true culture of Volkswagen – one characterized by an emphasis on  
22 profits and sales above compliance with federal and state clean air laws, and emissions  
23 regulations that are meant to protect the public and consumers. It also emphasized  
24 profits and sales over the trust that Plaintiff and Illinois Subclass members placed in  
25 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
26 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
27 intentional manipulation of the system. That’s just a whole other level of not only  
28

1 lying to the government, but also lying to your consumer. People buy diesel cars from  
2 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
3 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
4 want to be spewing noxious gases into the environment.”

5 682. Necessarily, Volkswagen also took steps to ensure that its employees did  
6 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
7 Illinois Subclass members. Volkswagen did so in order to boost the reputations of its  
8 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
9 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
10 with applicable law, including federal and state clean air laws and emissions  
11 regulations, and that its vehicles likewise comply with applicable law and regulations.  
12 Volkswagen’s false representations were material to consumers, both because they  
13 concerned the quality of the Affected Vehicles, including their compliance with  
14 applicable federal and state laws and regulations regarding clean air and emissions,  
15 and also because the representations played a significant role in the value of the  
16 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Illinois  
17 Subclass members, highly valued that the vehicles they were purchasing or leasing  
18 were *clean* diesel cars, and they paid accordingly.

19 683. Volkswagen had a duty to disclose its emissions scheme because  
20 knowledge of the scheme and its details were known and/or accessible only to  
21 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
22 maintenance of its scheme, and because Volkswagen knew the facts were not known  
23 to or reasonably discoverable by Plaintiff or Illinois Subclass members. Volkswagen  
24 also had a duty to disclose because it made general affirmative representations about  
25 the qualities of its vehicles with respect to emissions standards, starting with  
26 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
27 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
28

1 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
2 actual philosophy with respect to compliance with federal and state clean air laws and  
3 emissions regulations, and its actual practices with respect to the vehicles at issue.  
4 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
5 disclose not just the partial truth, but the entire truth. These omitted and concealed  
6 facts were material because they directly impact the value of the Affected Vehicles  
7 purchased or leased by Plaintiff and Illinois Subclass members. Whether a  
8 manufacturer's products comply with federal and state clean air laws and emissions  
9 regulations, and whether that manufacturer tells the truth with respect to such  
10 compliance or non-compliance, are material concerns to a consumer, including with  
11 respect to the emissions certification testing their vehicles must pass. Volkswagen  
12 represented to Plaintiff and Illinois Subclass members that they were purchasing *clean*  
13 diesel vehicles, and certification testing appeared to confirm this – except that,  
14 secretly, Volkswagen had subverted the testing process thoroughly.

15 684. Volkswagen actively concealed and/or suppressed these material facts, in  
16 whole or in part, to pad and protect its profits and to avoid the perception that its  
17 vehicles did not or could not comply with federal and state laws governing clean air  
18 and emissions, which perception would hurt the brand's image and cost Volkswagen  
19 money, and it did so at the expense of Plaintiff and Illinois Subclass members.

20 685. On information and belief, Volkswagen has still not made full and  
21 adequate disclosures, and continues to defraud Plaintiff and Illinois Subclass members  
22 by concealing material information regarding the emission qualities of its vehicles and  
23 its emissions scheme.

24 686. Plaintiff and Illinois Subclass members were unaware of the omitted  
25 material facts referenced herein, and they would not have acted as they did if they had  
26 known of the concealed and/or suppressed facts, in that they would not have  
27 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
28

1 not have continued to drive their heavily polluting vehicles, or would have taken other  
2 affirmative steps in light of the information concealed from them. Plaintiff's and  
3 Illinois Subclass members' actions were justified. Volkswagen was in exclusive  
4 control of the material facts, and such facts were not known to the public, Plaintiff, or  
5 Illinois Subclass members.

6 687. Because of the concealment and/or suppression of the facts, Plaintiff and  
7 Illinois Subclass members have sustained damage because they own vehicles that are  
8 diminished in value as a result of Volkswagen's concealment of the true quality and  
9 quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the  
10 actual emission qualities and quantities of hundreds of thousands of Volkswagen- and  
11 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
12 policies. Had Plaintiff and Illinois Subclass members been aware of Volkswagen's  
13 emissions scheme, and the company's callous disregard for compliance with  
14 applicable federal and state laws and regulations, Plaintiff and Illinois Subclass  
15 members who purchased or leased new or previously owned vehicles would have paid  
16 less for their vehicles or would not have purchased or leased them at all.

17 688. The value of Plaintiff's and Illinois Subclass members' vehicles has  
18 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
19 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
20 to Plaintiff's and Illinois Subclass members' vehicles and made any reasonable  
21 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
22 otherwise would have been fair market value for the vehicles. In addition, Class  
23 members are entitled to damages for loss of use, costs of additional fuel, costs of  
24 unused warranties, and other damages to be proved at trial.

25 689. Accordingly, Volkswagen is liable to Plaintiff and Illinois Subclass  
26 members for damages in an amount to be proven at trial.  
27  
28



690. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Illinois Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF CONTRACT  
(Based on Illinois Law)**

691. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

692. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Illinois Subclass.

693. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Illinois Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Illinois Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Illinois Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

694. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the

1 other Illinois Subclass members defective Affected Vehicles and by misrepresenting  
 2 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 3 defective design, including information known to Volkswagen rendering each  
 4 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 5 equipped with a CleanDiesel engine system.

6 695. As a direct and proximate result of Volkswagen's breach of contract,  
 7 Plaintiff and the Illinois Subclass have been damaged in an amount to be proven at  
 8 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 9 and consequential damages, and other damages allowed by law.

10 **P. Claims Brought on Behalf of the Indiana Subclass**

11 **COUNT I**  
 12 **VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT**  
**(IND. CODE § 24-5-0.5-3)**

13 696. Plaintiff Jeffrey Brady ("Plaintiff," for purposes of all Indiana Subclass  
 14 Counts) incorporates by reference all preceding allegations as though fully set forth  
 15 herein.

16 697. Plaintiff intends to assert a claim under Indiana's Deceptive Consumer  
 17 Sales Act ("Indiana DCSA") which prohibits a person from engaging in a "deceptive  
 18 trade practice," which includes representing: "(1) That such subject of a consumer  
 19 transaction has sponsorship, approval, performance, characteristics, accessories, uses,  
 20 or benefits that they do not have, or that a person has a sponsorship, approval, status,  
 21 affiliation, or connection it does not have; (2) That such subject of a consumer  
 22 transaction is of a particular standard, quality, grade, style or model, if it is not and if  
 23 the supplier knows or should reasonably know that it is not; ... (7) That the supplier  
 24 has a sponsorship, approval or affiliation in such consumer transaction that the  
 25 supplier does not have, and which the supplier knows or should reasonably know that  
 26 the supplier does not have; ... (b) Any representations on or within a product or its  
 27 packaging or in advertising or promotional materials which would constitute a  
 28

1 deceptive act shall be the deceptive act both of the supplier who places such a  
 2 representation thereon or therein, or who authored such materials, and such suppliers  
 3 who shall state orally or in writing that such representation is true if such other  
 4 supplier shall know or have reason to know that such representation was false.”  
 5 Plaintiffs will make a demand in satisfaction of IND. CODE § 24-5-0.5-5(a)(2), and may  
 6 amend this Complaint to assert claims under the CLRA once the required six months  
 7 have elapsed. This paragraph is included for purposes of notice only and is not  
 8 intended to actually assert a claim under the CLRA.

## 9 **COUNT II** 10 **FRAUD BY CONCEALMENT**

11 698. Plaintiffs reallege and incorporate by reference all paragraphs as though  
 12 fully set forth herein.

13 699. This claim is brought on behalf of the Indiana Subclass.

14 700. Volkswagen intentionally concealed and suppressed material facts  
 15 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
 16 notwithstanding references in the very model names of the subject vehicles as “Clean  
 17 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
 18 secret scheme to evade federal and state vehicle emissions standards by installing  
 19 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
 20 which contributes to the creation of ozone and smog. The software installed on the  
 21 vehicles at issue was designed nefariously to kick-in during emissions certification  
 22 testing, such that the vehicles would show far lower emissions than when actually  
 23 operating on the road. The result was what Volkswagen intended: vehicles passed  
 24 emissions certifications by way of deliberately induced false readings. Reportedly,  
 25 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
 26 vehicles at up to 40 times applicable standards.

27 701. Plaintiff and Indiana Subclass members reasonably relied upon  
 28 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s

1 representations were false and gravely misleading. As alleged herein, Volkswagen  
2 employed extremely sophisticated methods of deception. Plaintiff and Indiana  
3 Subclass members did not, and could not, unravel Volkswagen's deception on their  
4 own.

5 702. Volkswagen concealed and suppressed material facts concerning what is  
6 evidently the true culture of Volkswagen—one characterized by an emphasis on  
7 profits and sales above compliance with federal and state clean air laws, and emissions  
8 regulations that are meant to protect the public and consumers. It also emphasized  
9 profits and sales over the trust that Plaintiff and Indiana Subclass members placed in  
10 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
11 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
12 intentional manipulation of the system. That's just a whole other level of not only  
13 lying to the government, but also lying to your consumer. People buy diesel cars from  
14 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
15 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
16 want to be spewing noxious gases into the environment."

17 703. Necessarily, Volkswagen also took steps to ensure that its employees did  
18 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
19 Indiana Subclass members. Volkswagen did so in order to boost the reputations of its  
20 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
21 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
22 with applicable law, including federal and state clean air laws and emissions  
23 regulations, and that its vehicles likewise comply with applicable law and regulations.  
24 Volkswagen's false representations were material to consumers, both because they  
25 concerned the quality of the Affected Vehicles, including their compliance with  
26 applicable federal and state laws and regulations regarding clean air and emissions,  
27 and also because the representations played a significant role in the value of the  
28

1 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Indiana  
2 Subclass members, highly valued that the vehicles they were purchasing or leasing  
3 were *clean* diesel cars, and they paid accordingly.

4 704. Volkswagen had a duty to disclose its emissions scheme because  
5 knowledge of the scheme and its details were known and/or accessible only to  
6 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
7 maintenance of its scheme, and because Volkswagen knew the facts were not known  
8 to or reasonably discoverable by Plaintiff or Indiana Subclass members. Volkswagen  
9 also had a duty to disclose because it made general affirmative representations about  
10 the qualities of its vehicles with respect to emissions standards, starting with  
11 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
12 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
13 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
14 actual philosophy with respect to compliance with federal and state clean air laws and  
15 emissions regulations, and its actual practices with respect to the vehicles at issue.  
16 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
17 disclose not just the partial truth, but the entire truth. These omitted and concealed  
18 facts were material because they directly impact the value of the Affected Vehicles  
19 purchased or leased by Plaintiff and Indiana Subclass members. Whether a  
20 manufacturer's products comply with federal and state clean air laws and emissions  
21 regulations, and whether that manufacturer tells the truth with respect to such  
22 compliance or non-compliance, are material concerns to a consumer, including with  
23 respect to the emissions certification testing their vehicles must pass. Volkswagen  
24 represented to Plaintiff and Indiana Subclass members that they were purchasing *clean*  
25 diesel vehicles, and certification testing appeared to confirm this—except that,  
26 secretly, Volkswagen had subverted the testing process thoroughly.

1           705. Volkswagen actively concealed and/or suppressed these material facts, in  
2 whole or in part, to pad and protect its profits and to avoid the perception that its  
3 vehicles did not or could not comply with federal and state laws governing clean air  
4 and emissions, which perception would hurt the brand's image and cost Volkswagen  
5 money, and it did so at the expense of Plaintiff and Indiana Subclass members.

6           706. On information and belief, Volkswagen has still not made full and  
7 adequate disclosures, and continues to defraud Plaintiff and Indiana Subclass members  
8 by concealing material information regarding the emissions qualities of its vehicles  
9 and its emissions scheme.

10           707. Plaintiff and Indiana Subclass members were unaware of the omitted  
11 material facts referenced herein, and they would not have acted as they did if they had  
12 known of the concealed and/or suppressed facts, in that they would not have  
13 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
14 not have continued to drive their heavily polluting vehicles, or would have taken other  
15 affirmative steps in light of the information concealed from them. Plaintiff's and  
16 Indiana Subclass members' actions were justified. Volkswagen was in exclusive  
17 control of the material facts, and such facts were not known to the public, Plaintiff, or  
18 Indiana Subclass members.

19           708. Because of the concealment and/or suppression of the facts, Plaintiff and  
20 Indiana Subclass members have sustained damage because they own vehicles that are  
21 diminished in value as a result of Volkswagen's concealment of the true quality and  
22 quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the  
23 actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and  
24 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
25 policies. Had Plaintiff and Indiana Subclass members been aware of Volkswagen's  
26 emissions scheme, and the company's callous disregard for compliance with  
27 applicable federal and state laws and regulations, Plaintiff and Indiana Subclass  
28

1 members who purchased or leased new or previously owned vehicles would have paid  
2 less for their vehicles or would not have purchased or leased them at all.

3 709. The value of Plaintiff's and Indiana Subclass members' vehicles has  
4 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
5 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
6 to Plaintiff's and Indiana Subclass members' vehicles and made any reasonable  
7 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
8 otherwise would have been fair market value for the vehicles. In addition, Class  
9 members are entitled to damages for loss of use, costs of additional fuel, costs of  
10 unused warranties, and other damages to be proved at trial.

11 710. Accordingly, Volkswagen is liable to Plaintiff and Indiana Subclass  
12 members for damages in an amount to be proven at trial.

13 711. Volkswagen's acts were done wantonly, maliciously, oppressively,  
14 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Indiana  
15 Subclass members' rights and the representations that Volkswagen made to them, in  
16 order to enrich Volkswagen. To the extent permitted under applicable law,  
17 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
18 sufficient to deter such conduct in the future, which amount is to be determined  
19 according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON INDIANA LAW)**

22 712. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 713. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the Indiana Subclass.

26 714. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28



1 defect and/or defective design as alleged herein, caused Plaintiff and the other Indiana  
 2 Subclass members to make their purchases or leases of their Affected Vehicles.  
 3 Absent those misrepresentations and omissions, Plaintiff and the other Indiana  
 4 Subclass members would not have purchased or leased these Affected Vehicles, would  
 5 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
 6 would have purchased or leased less expensive alternative vehicles that did not contain  
 7 the CleanDiesel engine system and which were not marketed as including such a  
 8 system. Accordingly, Plaintiff and the other Indiana Subclass members overpaid for  
 9 their Affected Vehicles and did not receive the benefit of their bargain.

10 715. Each and every sale or lease of an Affected Vehicle by an authorized  
 11 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 12 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 13 other Indiana Subclass members defective Affected Vehicles and by misrepresenting  
 14 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 15 defective design, including information known to Volkswagen rendering each  
 16 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 17 equipped with a CleanDiesel engine system.

18 716. As a direct and proximate result of Volkswagen's breach of contract,  
 19 Plaintiff and the Indiana Subclass have been damaged in an amount to be proven at  
 20 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 21 and consequential damages, and other damages allowed by law.

22 **Q. Claims Brought on Behalf of the Iowa Subclass**

23 **COUNT I**  
 24 **VIOLATIONS OF THE PRIVATE RIGHT OF ACTION**  
 25 **FOR CONSUMER FRAUDS ACT**  
**(IOWA CODE §§ 714H.1, ET SEQ.)**

26 717. Plaintiff Boualivanh Phanphongsane ("Plaintiff," for purposes of all  
 27 Iowa Subclass Counts) incorporates by reference all preceding allegations as though  
 28 fully set forth herein.

1           718. Plaintiff brings this Count on behalf of the Iowa Subclass.

2           719. Defendants are each a “person” under Iowa Code § 714H.2(7).

3           720. Plaintiff and the Iowa Subclass are “consumers,” as defined by Iowa  
4 Code § 714H.2(3), who purchased or leased one or more Affected Vehicles.

5           721. Volkswagen participated in unfair or deceptive acts or practices that  
6 violated Iowa’s Private Right of Action for Consumer Fraud Act (“Iowa CFA”), Iowa  
7 Code § 714H.1, *et seq.*, as described herein. Volkswagen is directly liable for these  
8 violations of law.

9           722. By failing to disclose and actively concealing that the CleanDiesel engine  
10 systems were not EPA-complaint and used a “defeat device” in the Affected Vehicles,  
11 Volkswagen engaged in deceptive business practices prohibited by the Iowa CFA,  
12 including (1) representing that Affected Vehicles have characteristics, uses, benefits,  
13 and qualities which they do not have, (2) representing that Affected Vehicles are of a  
14 particular standard, quality, and grade when they are not, (3) advertising Affected  
15 Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or  
16 practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

17           723. As alleged above, Volkswagen made numerous material statements about  
18 the benefits and characteristics of the CleanDiesel engine system that were either false  
19 or misleading. Each of these statements contributed to the deceptive context of  
20 Volkswagen’s unlawful advertising and representations as a whole.

21           724. Volkswagen knew that the CleanDiesel engine system in the Affected  
22 Vehicles were defectively designed or manufactured, did not comply with EPA  
23 regulations, and were not suitable for their intended use. Volkswagen nevertheless  
24 failed to warn Plaintiff about these defects despite having a duty to do so.

25           725. Volkswagen owed Plaintiff a duty to disclose the defective nature of the  
26 CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- 27           a. Possessed exclusive knowledge of the defects rendering the  
28 Affected Vehicles non-compliant with EPA regulations;

- 1 b. Intentionally concealed the defects associated with the  
2 CleanDiesel engine system through its deceptive marketing  
3 campaigns and “defeat device” that it designed to hide the  
4 defects in the CleanDiesel engine system; and/or  
5 c. Made incomplete representations about the characteristics  
6 and performance of the CleanDiesel engine system  
7 generally, while purposefully withholding material facts  
8 from Plaintiff that contradicted these representations.

9 726. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
10 in fact deceive reasonable consumers, including Plaintiff, about the true performance  
11 and characteristics of the CleanDiesel engine system.

12 727. As a result of its violations of the Iowa CFA detailed above, Volkswagen  
13 caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff.  
14 Plaintiff currently owns or leases, or within the Class Period has owned or leased, an  
15 Affected Vehicle that is defective. Defects associated with the CleanDiesel engine  
16 system have caused the value of the Affected Vehicles, including Plaintiff’s Vehicle,  
17 to decrease.

18 728. Plaintiff and the Class sustained damages as a result of the Volkswagen’s  
19 unlawful acts and are, therefore, entitled to damages and other relief as provided under  
20 Chapter 714H of the Iowa Code. Because Volkswagen’s conduct was committed  
21 willfully, Plaintiff seeks treble damages as provided in Iowa Code § 714H.5(4).

22 729. Plaintiff also seeks court costs and attorneys’ fees as a result of  
23 Volkswagen’s violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

24 **COUNT II**  
25 **BREACH OF CONTRACT**  
26 **(BASED ON IOWA LAW)**

27 730. Plaintiff incorporates by reference all preceding allegations as though  
28 fully set forth herein.

731. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
owned vehicle purchasers in the Iowa Subclass.

1           732. Volkswagen's misrepresentations and omissions alleged herein, including  
2 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
3 defect and/or defective design as alleged herein, caused Plaintiff and the other Iowa  
4 Subclass members to make their purchases or leases of their Affected Vehicles.  
5 Absent those misrepresentations and omissions, Plaintiff and the other Iowa Subclass  
6 members would not have purchased or leased these Affected Vehicles, would not have  
7 purchased or leased these Affected Vehicles at the prices they paid, and/or would have  
8 purchased or leased less expensive alternative vehicles that did not contain the  
9 CleanDiesel engine system and which were not marketed as including such a system.  
10 Accordingly, Plaintiff and the other Iowa Subclass members overpaid for their  
11 Affected Vehicles and did not receive the benefit of their bargain.

12           733. Each and every sale or lease of an Affected Vehicle by an authorized  
13 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
14 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
15 other Iowa Subclass members defective Affected Vehicles and by misrepresenting or  
16 failing to disclose the existence of the CleanDiesel engine system's defect and/or  
17 defective design, including information known to Volkswagen rendering each  
18 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
19 equipped with a CleanDiesel engine system.

20           734. As a direct and proximate result of Volkswagen's breach of contract,  
21 Plaintiff and the Iowa Subclass have been damaged in an amount to be proven at trial,  
22 which shall include, but is not limited to, all compensatory damages, incidental and  
23 consequential damages, and other damages allowed by law.

24                                   **COUNT III**  
25                                   **FRAUDULENT CONCEALMENT**  
  **(BASED ON IOWA LAW)**

26           735. Plaintiff incorporates by reference all preceding allegations as though  
27 fully set forth herein.  
28

1           736. Plaintiff brings this Count on behalf of the Iowa Subclass.

2           737. Volkswagen intentionally concealed that the CleanDiesel engine systems  
3 were not EPA-compliant and used a “defeat device”, or acted with reckless disregard  
4 for the truth, and denied Plaintiff and the other Class members information that is  
5 highly relevant to their purchasing decision.

6           738. Volkswagen further affirmatively misrepresented to Plaintiff in  
7 advertising and other forms of communication, including standard and uniform  
8 material provided with each car, that the Affected Vehicles it was selling were new,  
9 had no significant defects, complied with EPA regulations and would perform and  
10 operate properly when driven in normal usage.

11           739. Volkswagen knew these representations were false when made.

12           740. The Affected Vehicles purchased or leased by Plaintiff and the other  
13 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
14 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
15 system, as alleged herein.

16           741. Volkswagen had a duty to disclose that these Affected Vehicles were  
17 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
18 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
19 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
20 other Class members relied on Volkswagen’s material representations that the  
21 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
22 and free from defects.

23           742. The aforementioned concealment was material because if it had been  
24 disclosed Plaintiff and the other Class members would not have bought or leased the  
25 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
26 they paid.

743. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

744. Plaintiff and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

745. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

746. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

## **R. Claims Brought on Behalf of the Kansas Subclass**

### **COUNT I VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT (KAN. STAT. ANN. § 50-623, *ET SEQ.*)**

747. Plaintiff Brenda Penney (“Plaintiff,” for purposes of all Kansas Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

748. This claim is brought only on behalf of members of the Kansas Subclass.

1           749. Volkswagen is a “supplier” under the Kansas Consumer Protection Act  
2 (“Kansas CPA”), KAN. STAT. ANN. § 50-624(l).

3           750. Kansas Class Members are “consumers,” within the meaning of KAN.  
4 STAT. ANN. § 50-624(b), who purchased or leased one or more Affected Vehicles.

5           751. The sale of the Affected Vehicles to the Kansas Class Members was a  
6 “consumer transaction” within the meaning of KAN. STAT. ANN. § 50-624(c).

7           752. The Kansas CPA states “[n]o supplier shall engage in any deceptive act  
8 or practice in connection with a consumer transaction,” KAN. STAT. ANN. § 50-626(a),  
9 and that deceptive acts or practices include: (1) knowingly making representations or  
10 with reason to know that “(A) Property or services have sponsorship, approval,  
11 accessories, characteristics, ingredients, uses, benefits or quantities that they do not  
12 have;” and “(D) property or services are of particular standard, quality, grade, style or  
13 model, if they are of another which differs materially from the representation;” “(2)  
14 the willful use, in any oral or written representation, of exaggeration, falsehood,  
15 innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a  
16 material fact, or the willful concealment, suppression or omission of a material fact.”  
17 The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable  
18 act or practice in connection with a consumer transaction.” KAN. STAT. ANN. § 50-  
19 627(a).

20           753. Volkswagen participated in misleading, false, or deceptive acts that  
21 violated the Kansas CPA. By fraudulently installing the “defeat device” to make it  
22 appear that its CleanDiesel engine systems complied with EPA regulations,  
23 Volkswagen engaged in deceptive business practices prohibited by the Kansas CPA.  
24 Volkswagen also engaged in unlawful trade practices by: (1) representing that the  
25 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not  
26 have; (2) representing that the Affected Vehicles are of a particular standard and  
27 quality when they are not; (3) advertising the Affected Vehicles with the intent not to  
28



1 sell them as advertised; (4) willfully using, in any oral or written representation, of  
2 exaggeration, falsehood, innuendo or ambiguity as to a material fact; (5) willfully  
3 failing to state a material fact, or the willfully concealing, suppressing or omitting a  
4 material fact; and (6) otherwise engaging in an unconscionable act or practice in  
5 connection with a consumer transaction.

6 754. Volkswagen's actions as set forth above occurred in the conduct of trade  
7 or commerce.

8 755. In the course of its business, Volkswagen installed the "defeat device"  
9 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
10 and otherwise engaged in activities with a tendency or capacity to deceive.

11 Volkswagen also engaged in unlawful trade practices by employing deception,  
12 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
13 omission of any material fact with intent that others rely upon such concealment,  
14 suppression or omission, in connection with the sale of Affected Vehicles.

15 756. Volkswagen has known of its use of the "defeat device" and the true  
16 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
17 information until recently.

18 757. Volkswagen was also aware that it valued profits over environmental  
19 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
20 distributing vehicles throughout the United States that did not comply with EPA  
21 regulations. Volkswagen concealed this information as well.

22 758. By failing to disclose and by actively concealing the "defeat device" and  
23 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
24 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
25 by presenting itself as a reputable manufacturer that valued safety, environmental  
26 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
27 Volkswagen engaged in deceptive business practices in violation of the Kansas CPA.  
28

1           759. In the course of Volkswagen's business, it willfully failed to disclose and  
 2 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
 3 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
 4 compounded the deception by repeatedly asserting that the Affected Vehicles were  
 5 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
 6 be a reputable manufacturer that valued safety, environmental cleanliness and  
 7 efficiency, and stood behind its vehicles once they are on the road.

8           760. Volkswagen's unfair or deceptive acts or practices were likely to and did  
 9 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
 10 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 11 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 12 and the true value of the Affected Vehicles.

13           761. Volkswagen intentionally and knowingly misrepresented material facts  
 14 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Kansas  
 15 Class.

16           762. Volkswagen knew or should have known that its conduct violated the  
 17 Kansas CPA.

18           763. As alleged above, Volkswagen made material statements about the safety,  
 19 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
 20 and Audi brands that were either false or misleading.

21           764. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 22 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 23 cleanliness and integrity at Volkswagen, because Volkswagen:

- 24           a. Possessed exclusive knowledge that it valued profits  
 25 over environmental cleanliness, efficiency, and  
 26 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 27           b. Intentionally concealed the foregoing from Plaintiffs;  
 28 and/or

- 1           c.     Made incomplete representations about the safety,  
2           cleanliness, efficiency and reliability of the Affected  
3           Vehicles generally, and the “defeat device” and true  
4           nature of the CleanDiesel engine system in particular,  
5           while purposefully withholding material facts from  
6           Plaintiffs that contradicted these representations.

7           765. Because Volkswagen fraudulently concealed the “defeat device” and the  
8           true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
9           of negative publicity once the use of the “defeat device” and true characteristics of the  
10          CleanDiesel engine system finally began to be disclosed, the value of the Affected  
11          Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
12          Volkswagen’s conduct, they are now worth significantly less than they otherwise  
13          would be.

14          766. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
15          of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
16          and the Kansas Class. A vehicle made by a reputable manufacturer of safe vehicles is  
17          worth more than an otherwise comparable vehicle made by a disreputable  
18          manufacturer of environmentally dirty vehicles that conceals its polluting engines  
19          rather than promptly remedying them.

20          767. Plaintiffs and the Kansas Class suffered ascertainable loss caused by  
21          Volkswagen’s misrepresentations and its concealment of and failure to disclose  
22          material information. Class members who purchased the Affected Vehicles either  
23          would have paid less for their vehicles or would not have purchased or leased them at  
24          all.

25          768. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
26          to refrain from unfair and deceptive acts or practices under the Kansas CPA. All  
27          owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
28          value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and  
29          practices made in the course of Volkswagen’s business.



1 emissions certifications by way of deliberately induced false readings. Reportedly,  
2 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
3 vehicles at up to 40 times applicable standards.

4 776. Plaintiff and Kansas Subclass members reasonably relied upon  
5 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
6 representations were false and gravely misleading. As alleged herein, Volkswagen  
7 employed extremely sophisticated methods of deception. Plaintiff and Kansas  
8 Subclass members did not, and could not, unravel Volkswagen's deception on their  
9 own.

10 777. Volkswagen concealed and suppressed material facts concerning what is  
11 evidently the true culture of Volkswagen—one characterized by an emphasis on  
12 profits and sales above compliance with federal and state clean air laws, and emissions  
13 regulations that are meant to protect the public and consumers. It also emphasized  
14 profits and sales over the trust that Plaintiff and Kansas Subclass members placed in  
15 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
16 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
17 intentional manipulation of the system. That's just a whole other level of not only  
18 lying to the government, but also lying to your consumer. People buy diesel cars from  
19 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
20 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
21 want to be spewing noxious gases into the environment."

22 778. Necessarily, Volkswagen also took steps to ensure that its employees did  
23 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
24 Kansas Subclass members. Volkswagen did so in order to boost the reputations of its  
25 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
26 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
27 with applicable law, including federal and state clean air laws and emissions  
28

1 regulations, and that its vehicles likewise comply with applicable law and regulations.  
2 Volkswagen's false representations were material to consumers, both because they  
3 concerned the quality of the Affected Vehicles, including their compliance with  
4 applicable federal and state laws and regulations regarding clean air and emissions,  
5 and also because the representations played a significant role in the value of the  
6 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Kansas  
7 Subclass members, highly valued that the vehicles they were purchasing or leasing  
8 were *clean* diesel cars, and they paid accordingly.

9 779. Volkswagen had a duty to disclose its emissions scheme because  
10 knowledge of the scheme and its details were known and/or accessible only to  
11 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
12 maintenance of its scheme, and because Volkswagen knew the facts were not known  
13 to or reasonably discoverable by Plaintiff or Kansas Subclass members. Volkswagen  
14 also had a duty to disclose because it made general affirmative representations about  
15 the qualities of its vehicles with respect to emissions standards, starting with  
16 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
17 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
18 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
19 actual philosophy with respect to compliance with federal and state clean air laws and  
20 emissions regulations, and its actual practices with respect to the vehicles at issue.  
21 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
22 disclose not just the partial truth, but the entire truth. These omitted and concealed  
23 facts were material because they directly impact the value of the Affected Vehicles  
24 purchased or leased by Plaintiff and Kansas Subclass members. Whether a  
25 manufacturer's products comply with federal and state clean air laws and emissions  
26 regulations, and whether that manufacturer tells the truth with respect to such  
27 compliance or non-compliance, are material concerns to a consumer, including with  
28

1 respect to the emissions certification testing their vehicles must pass. Volkswagen  
2 represented to Plaintiff and Kansas Subclass members that they were purchasing *clean*  
3 diesel vehicles, and certification testing appeared to confirm this—except that,  
4 secretly, Volkswagen had subverted the testing process thoroughly.

5 780. Volkswagen actively concealed and/or suppressed these material facts, in  
6 whole or in part, to pad and protect its profits and to avoid the perception that its  
7 vehicles did not or could not comply with federal and state laws governing clean air  
8 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
9 money, and it did so at the expense of Plaintiff and Kansas Subclass members.

10 781. On information and belief, Volkswagen has still not made full and  
11 adequate disclosures, and continues to defraud Plaintiff and Kansas Subclass members  
12 by concealing material information regarding the emissions qualities of its vehicles  
13 and its emissions scheme.

14 782. Plaintiff and Kansas Subclass members were unaware of the omitted  
15 material facts referenced herein, and they would not have acted as they did if they had  
16 known of the concealed and/or suppressed facts, in that they would not have  
17 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
18 not have continued to drive their heavily polluting vehicles, or would have taken other  
19 affirmative steps in light of the information concealed from them. Plaintiff’s and  
20 Kansas Subclass members’ actions were justified. Volkswagen was in exclusive  
21 control of the material facts, and such facts were not known to the public, Plaintiff, or  
22 Kansas Subclass members.

23 783. Because of the concealment and/or suppression of the facts, Plaintiff and  
24 Kansas Subclass members have sustained damage because they own vehicles that are  
25 diminished in value as a result of Volkswagen’s concealment of the true quality and  
26 quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the  
27 actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and  
28



1 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
2 policies. Had Plaintiff and Kansas Subclass members been aware of Volkswagen's  
3 emissions scheme, and the company's callous disregard for compliance with  
4 applicable federal and state laws and regulations, Plaintiff and Kansas Subclass  
5 members who purchased or leased new or previously owned vehicles would have paid  
6 less for their vehicles or would not have purchased or leased them at all.

7 784. The value of Plaintiff's and Kansas Subclass members' vehicles has  
8 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
9 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
10 to Plaintiff's and Kansas Subclass members' vehicles and made any reasonable  
11 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
12 otherwise would have been fair market value for the vehicles. In addition, Class  
13 members are entitled to damages for loss of use, costs of additional fuel, costs of  
14 unused warranties, and other damages to be proved at trial.

15 785. Accordingly, Volkswagen is liable to Plaintiff and Kansas Subclass  
16 members for damages in an amount to be proven at trial.

17 786. Volkswagen's acts were done wantonly, maliciously, oppressively,  
18 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Kansas  
19 Subclass members' rights and the representations that Volkswagen made to them, in  
20 order to enrich Volkswagen. To the extent permitted under applicable law,  
21 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
22 sufficient to deter such conduct in the future, which amount is to be determined  
23 according to proof.

24 **COUNT III**  
25 **BREACH OF CONTRACT**  
**(BASED ON KANSAS LAW)**

26 787. Plaintiff incorporates by reference all preceding allegations as though  
27 fully set forth herein.  
28

1           788. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
2 owned vehicle purchasers in the Kansas Subclass.

3           789. Volkswagen's misrepresentations and omissions alleged herein, including  
4 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
5 defect and/or defective design as alleged herein, caused Plaintiff and the other Kansas  
6 Subclass members to make their purchases or leases of their Affected Vehicles.  
7 Absent those misrepresentations and omissions, Plaintiff and the other Kansas  
8 Subclass members would not have purchased or leased these Affected Vehicles, would  
9 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
10 would have purchased or leased less expensive alternative vehicles that did not contain  
11 the CleanDiesel engine system and which were not marketed as including such a  
12 system. Accordingly, Plaintiff and the other Kansas Subclass members overpaid for  
13 their Affected Vehicles and did not receive the benefit of their bargain.

14           790. Each and every sale or lease of an Affected Vehicle by an authorized  
15 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
16 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
17 other Kansas Subclass members defective Affected Vehicles and by misrepresenting  
18 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
19 defective design, including information known to Volkswagen rendering each  
20 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
21 equipped with a CleanDiesel engine system.

22           791. As a direct and proximate result of Volkswagen's breach of contract,  
23 Plaintiff and the Kansas Subclass have been damaged in an amount to be proven at  
24 trial, which shall include, but is not limited to, all compensatory damages, incidental  
25 and consequential damages, and other damages allowed by law.

26 **S. Claims Brought on Behalf of the Kentucky Subclass**

27 **COUNT I**  
28 **VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT**  
**(KY. REV. STAT. § 367.110, et seq.)**

1           792. Plaintiff Michael Antis (“Plaintiff,” for purposes of all Kentucky Subclass  
2 Counts) incorporates by reference all preceding allegations as though fully set forth  
3 herein.

4           793. This claim is brought only on behalf of the Kentucky Subclass.

5           794. Volkswagen, Plaintiffs, and the Kentucky Subclass are “persons” within  
6 the meaning of the KY. REV. STAT. § 367.110(1).

7           795. Volkswagen engaged in “trade” or “commerce” within the meaning of  
8 KY. REV. STAT. § 367.110(2).

9           796. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes  
10 unlawful “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of  
11 any trade or commerce ....” KY. REV. STAT. § 367.170(1). Volkswagen both  
12 participated in misleading, false, or deceptive acts that violated the Kentucky CPA.  
13 By fraudulently installing the “defeat device” to make it appear that its CleanDiesel  
14 engine systems complied with EPA regulations, Volkswagen engaged in deceptive  
15 business practices prohibited by the Kentucky CPA.

16           797. In the course of its business, Volkswagen installed the “defeat device”  
17 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
18 and otherwise engaged in activities with a tendency or capacity to deceive.  
19 Volkswagen also engaged in unlawful trade practices by employing deception,  
20 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
21 omission of any material fact with intent that others rely upon such concealment,  
22 suppression or omission, in connection with the sale of Affected Vehicles.

23           798. Volkswagen has known of its use of the “defeat device” and the true  
24 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
25 information until recently.

26           799. Volkswagen was also aware that it valued profits over environmental  
27 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
28

1 distributing vehicles throughout the United States that did not comply with EPA  
2 regulations. Volkswagen concealed this information as well.

3 800. By failing to disclose and by actively concealing the “defeat device” and  
4 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
5 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
6 by presenting itself as a reputable manufacturer that valued safety, environmental  
7 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
8 Volkswagen engaged in deceptive business practices in violation of the Kentucky  
9 CPA.

10 801. In the course of Volkswagen’s business, it willfully failed to disclose and  
11 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
12 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
13 compounded the deception by repeatedly asserting that the Affected Vehicles were  
14 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
15 be a reputable manufacturer that valued safety, environmental cleanliness and  
16 efficiency, and stood behind its vehicles once they are on the road.

17 802. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
18 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
19 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
20 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
21 and the true value of the Affected Vehicles.

22 803. Volkswagen intentionally and knowingly misrepresented material facts  
23 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Kentucky  
24 Subclass.

25 804. Volkswagen knew or should have known that its conduct violated the  
26 Kentucky CPA.

1           805. Volkswagen made material statements about the safety, cleanliness,  
2 efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi  
3 brands that were either false or misleading.

4           806. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
5 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
6 cleanliness and integrity at Volkswagen, because Volkswagen:

- 7           a. Possessed exclusive knowledge that it valued profits  
8 over environmental cleanliness, efficiency, and  
9 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 10          b. Intentionally concealed the foregoing from Plaintiffs;  
11 and/or
- 12          c. Made incomplete representations about the safety,  
13 cleanliness, efficiency and reliability of the Affected  
14 Vehicles generally, and the “defeat device” and true  
nature of the CleanDiesel engine system in particular,  
while purposefully withholding material facts from  
Plaintiffs that contradicted these representations.

15           807. Because Volkswagen fraudulently concealed the “defeat device” and the  
16 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
17 of negative publicity once the use of the “defeat device” and true characteristics of the  
18 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
19 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
20 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
21 would be.

22           808. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
23 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
24 and the Kentucky Subclass. A vehicle made by a reputable manufacturer of  
25 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
26 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
27 its polluting engines rather than promptly remedying them.

1           809. Plaintiffs and the Kentucky Subclass suffered ascertainable loss caused  
2 by Volkswagen's misrepresentations and its concealment of and failure to disclose  
3 material information. Class members who purchased the Affected Vehicles either  
4 would have paid less for their vehicles or would not have purchased or leased them at  
5 all.

6           810. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
7 to refrain from unfair and deceptive acts or practices under the Kentucky CPA. All  
8 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
9 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
10 practices made in the course of Volkswagen's business

11           811. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
12 to the general public. Volkswagen's unlawful acts and practices complained of herein  
13 affect the public interest.

14           812. As a direct and proximate result of Volkswagen's violations of the  
15 Kentucky CPA, Plaintiffs and the Kentucky Subclass have suffered injury-in-fact  
16 and/or actual damage.

17           813. Pursuant to KY. REV. STAT. ANN. § 367.220, Plaintiffs and the Kentucky  
18 Subclass seek to recover actual damages in an amount to be determined at trial; an  
19 order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices; declaratory  
20 relief; attorneys' fees; and any other just and proper relief available under KY. REV.  
21 STAT. ANN. § 367.220.

22                                   **COUNT II**  
23                                   **FRAUD BY CONCEALMENT**

24           814. Plaintiffs reallege and incorporate by reference all paragraphs as though  
25 fully set forth herein.

26           815. This claim is brought on behalf of the Kentucky Subclass.

27           816. Volkswagen intentionally concealed and suppressed material facts  
28 concerning the quality of the Affected Vehicles. As alleged in this Complaint,

1 notwithstanding references in the very model names of the subject vehicles as “Clean  
2 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
3 secret scheme to evade federal and state vehicle emissions standards by installing  
4 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
5 which contributes to the creation of ozone and smog. The software installed on the  
6 vehicles at issue was designed nefariously to kick-in during emissions certification  
7 testing, such that the vehicles would show far lower emissions than when actually  
8 operating on the road. The result was what Volkswagen intended: vehicles passed  
9 emissions certifications by way of deliberately induced false readings. Reportedly,  
10 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
11 vehicles at up to 40 times applicable standards.

12 817. Plaintiff and Kentucky Subclass members reasonably relied upon  
13 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s  
14 representations were false and gravely misleading. As alleged herein, Volkswagen  
15 employed extremely sophisticated methods of deception. Plaintiff and Kentucky  
16 Subclass members did not, and could not, unravel Volkswagen’s deception on their  
17 own.

18 818. Volkswagen concealed and suppressed material facts concerning what is  
19 evidently the true culture of Volkswagen – one characterized by an emphasis on  
20 profits and sales above compliance with federal and state clean air laws, and emissions  
21 regulations that are meant to protect the public and consumers. It also emphasized  
22 profits and sales over the trust that Plaintiff and Kentucky Subclass members placed in  
23 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
24 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
25 intentional manipulation of the system. That’s just a whole other level of not only  
26 lying to the government, but also lying to your consumer. People buy diesel cars from  
27 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
28



1 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
2 want to be spewing noxious gases into the environment.”

3 819. Necessarily, Volkswagen also took steps to ensure that its employees did  
4 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
5 Kentucky Subclass members. Volkswagen did so in order to boost the reputations of  
6 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
7 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
8 with applicable law, including federal and state clean air laws and emissions  
9 regulations, and that its vehicles likewise comply with applicable law and regulations.  
10 Volkswagen’s false representations were material to consumers, both because they  
11 concerned the quality of the Affected Vehicles, including their compliance with  
12 applicable federal and state laws and regulations regarding clean air and emissions,  
13 and also because the representations played a significant role in the value of the  
14 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Kentucky  
15 Subclass members, highly valued that the vehicles they were purchasing or leasing  
16 were *clean* diesel cars, and they paid accordingly.

17 820. Volkswagen had a duty to disclose its emissions scheme because  
18 knowledge of the scheme and its details were known and/or accessible only to  
19 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
20 maintenance of its scheme, and because Volkswagen knew the facts were not known  
21 to or reasonably discoverable by Plaintiff or Kentucky Subclass members.  
22 Volkswagen also had a duty to disclose because it made general affirmative  
23 representations about the qualities of its vehicles with respect to emissions standards,  
24 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
25 which were misleading, deceptive, and incomplete without the disclosure of the  
26 additional facts set forth above regarding its emissions scheme, the actual emissions of  
27 its vehicles, its actual philosophy with respect to compliance with federal and state  
28

1 clean air laws and emissions regulations, and its actual practices with respect to the  
2 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
3 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
4 These omitted and concealed facts were material because they directly impact the  
5 value of the Affected Vehicles purchased or leased by Plaintiff and Kentucky Subclass  
6 members. Whether a manufacturer's products comply with federal and state clean air  
7 laws and emissions regulations, and whether that manufacturer tells the truth with  
8 respect to such compliance or non-compliance, are material concerns to a consumer,  
9 including with respect to the emissions certification testing their vehicles must pass.  
10 Volkswagen represented to Plaintiff and Kentucky Subclass members that they were  
11 purchasing *clean* diesel vehicles, and certification testing appeared to confirm this –  
12 except that, secretly, Volkswagen had subverted the testing process thoroughly.

13 821. Volkswagen actively concealed and/or suppressed these material facts, in  
14 whole or in part, to pad and protect its profits and to avoid the perception that its  
15 vehicles did not or could not comply with federal and state laws governing clean air  
16 and emissions, which perception would hurt the brand's image and cost Volkswagen  
17 money, and it did so at the expense of Plaintiff and Kentucky Subclass members.

18 822. On information and belief, Volkswagen has still not made full and  
19 adequate disclosures, and continues to defraud Plaintiff and Kentucky Subclass  
20 members by concealing material information regarding the emission qualities of its  
21 vehicles and its emissions scheme.

22 823. Plaintiff and Kentucky Subclass members were unaware of the omitted  
23 material facts referenced herein, and they would not have acted as they did if they had  
24 known of the concealed and/or suppressed facts, in that they would not have  
25 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
26 not have continued to drive their heavily polluting vehicles, or would have taken other  
27 affirmative steps in light of the information concealed from them. Plaintiff's and  
28

1 Kentucky Subclass members' actions were justified. Volkswagen was in exclusive  
2 control of the material facts, and such facts were not known to the public, Plaintiff, or  
3 Kentucky Subclass members.

4 824. Because of the concealment and/or suppression of the facts, Plaintiff and  
5 Kentucky Subclass members have sustained damage because they own vehicles that  
6 are diminished in value as a result of Volkswagen's concealment of the true quality  
7 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
8 the actual emission qualities and quantities of hundreds of thousands of Volkswagen-  
9 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
10 corporate policies. Had Plaintiff and Kentucky Subclass members been aware of  
11 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
12 with applicable federal and state laws and regulations, Plaintiff and Kentucky Subclass  
13 members who purchased or leased new or previously owned vehicles would have paid  
14 less for their vehicles or would not have purchased or leased them at all.

15 825. The value of Plaintiff's and Kentucky Subclass members' vehicles has  
16 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
17 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
18 to Plaintiff's and Kentucky Subclass members' vehicles and made any reasonable  
19 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
20 otherwise would have been fair market value for the vehicles. In addition, Class  
21 members are entitled to damages for loss of use, costs of additional fuel, costs of  
22 unused warranties, and other damages to be proved at trial.

23 826. Accordingly, Volkswagen is liable to Plaintiff and Kentucky Subclass  
24 members for damages in an amount to be proven at trial.

25 827. Volkswagen's acts were done wantonly, maliciously, oppressively,  
26 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
27 Kentucky Subclass members' rights and the representations that Volkswagen made to  
28

1 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
2 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
3 sufficient to deter such conduct in the future, which amount is to be determined  
4 according to proof.

5 **COUNT III**  
6 **BREACH OF CONTRACT**  
7 **(Based on Kentucky Law)**

8 828. Plaintiff incorporates by reference all preceding allegations as though  
9 fully set forth herein.

10 829. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
11 owned vehicle purchasers in the Kentucky Subclass.

12 830. Volkswagen's misrepresentations and omissions alleged herein, including  
13 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
14 defect and/or defective design as alleged herein, caused Plaintiff and the other  
15 Kentucky Subclass members to make their purchases or leases of their Affected  
16 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
17 Kentucky Subclass members would not have purchased or leased these Affected  
18 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
19 they paid, and/or would have purchased or leased less expensive alternative vehicles  
20 that did not contain the CleanDiesel engine system and which were not marketed as  
21 including such a system. Accordingly, Plaintiff and the other Kentucky Subclass  
22 members overpaid for their Affected Vehicles and did not receive the benefit of their  
23 bargain.

24 831. Each and every sale or lease of an Affected Vehicle by an authorized  
25 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
26 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
27 other Kentucky Subclass members defective Affected Vehicles and by  
28 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's

1 defect and/or defective design, including information known to Volkswagen rendering  
2 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
3 equipped with a CleanDiesel engine system.

4 832. As a direct and proximate result of Volkswagen's breach of contract,  
5 Plaintiff and the Kentucky Subclass have been damaged in an amount to be proven at  
6 trial, which shall include, but is not limited to, all compensatory damages, incidental  
7 and consequential damages, and other damages allowed by law.

8 **T. Claims Brought on Behalf of the Louisiana Subclass**

9 **COUNT I**  
10 **VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND**  
11 **CONSUMER PROTECTION LAW**  
**(LA. REV. STAT. § 51:1401, ET SEQ.)**

12 833. Plaintiff Alex Arceneaux ("Plaintiff," for purposes of all Louisiana  
13 Subclass Counts) incorporates by reference all preceding allegations as though fully  
14 set forth herein.

15 834. This claim is brought on behalf of the Louisiana Subclass.

16 835. Volkswagen, Plaintiffs, and the Louisiana Subclass are "persons" within  
17 the meaning of the LA. REV. STAT. § 51:1402(8).

18 836. Plaintiffs and the Louisiana Subclass are "consumers" within the meaning  
19 of LA. REV. STAT. § 51:1402(1).

20 837. Volkswagen engaged in "trade" or "commerce" within the meaning of  
21 LA. REV. STAT. § 51:1402(9).

22 838. The Louisiana Unfair Trade Practices and Consumer Protection Law  
23 ("Louisiana CPL") makes unlawful "deceptive acts or practices in the conduct of any  
24 trade or commerce." LA. REV. STAT. § 51:1405(A). Volkswagen both participated in  
25 misleading, false, or deceptive acts that violated the Louisiana CPL. By fraudulently  
26 installing the "defeat device" to make it appear that its CleanDiesel engine systems  
27 complied with EPA regulations, Volkswagen engaged in deceptive business practices  
28 prohibited by the Louisiana CPL.

1           839. In the course of its business, Volkswagen installed the “defeat device”  
2 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
3 and otherwise engaged in activities with a tendency or capacity to deceive.

4 Volkswagen also engaged in unlawful trade practices by employing deception,  
5 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
6 omission of any material fact with intent that others rely upon such concealment,  
7 suppression or omission, in connection with the sale of Affected Vehicles.

8           840. Volkswagen has known of its use of the “defeat device” and the true  
9 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
10 information until recently.

11           841. Volkswagen was also aware that it valued profits over environmental  
12 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
13 distributing vehicles throughout the United States that did not comply with EPA  
14 regulations. Volkswagen concealed this information as well.

15           842. According to one report from the Center for Auto Safety, some 2,004  
16 deaths and injuries are connected with recently recalled GM-branded vehicles, and  
17 Volkswagen should have recalled the vehicles years ago.

18           843. By failing to disclose and by actively concealing the “defeat device” and  
19 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
20 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
21 by presenting itself as a reputable manufacturer that valued safety, environmental  
22 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
23 Volkswagen engaged in deceptive business practices in violation of the Louisiana  
24 CPL.

25           844. In the course of Volkswagen’s business, it willfully failed to disclose and  
26 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
27 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
28

1 compounded the deception by repeatedly asserting that the Affected Vehicles were  
2 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
3 be a reputable manufacturer that valued safety, environmental cleanliness and  
4 efficiency, and stood behind its vehicles once they are on the road.

5 845. Volkswagen's unfair or deceptive acts or practices were likely to and did  
6 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
7 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
8 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
9 and the true value of the Affected Vehicles.

10 846. Volkswagen intentionally and knowingly misrepresented material facts  
11 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Louisiana  
12 Subclass.

13 847. Volkswagen knew or should have known that its conduct violated the  
14 Louisiana CPL.

15 848. As alleged above, Volkswagen made material statements about the safety,  
16 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
17 and Audi brands that were either false or misleading.

18 849. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
19 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
20 cleanliness and integrity at Volkswagen, because Volkswagen:

- 21 a. Possessed exclusive knowledge that it valued profits  
22 over environmental cleanliness, efficiency, and  
23 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 24 b. Intentionally concealed the foregoing from Plaintiffs;  
25 and/or
- 26 c. Made incomplete representations about the safety,  
27 cleanliness, efficiency and reliability of the Affected  
28 Vehicles generally, and the use of the "defeat device"  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material



1 facts from Plaintiffs that contradicted these  
2 representations.

3 850. Because Volkswagen fraudulently concealed the “defeat device” and the  
4 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
5 of negative publicity once the use of the “defeat device” and true characteristics of the  
6 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
7 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
8 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
9 would be.

10 851. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
11 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
12 and the Louisiana Subclass. A vehicle made by a reputable manufacturer of  
13 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
14 made by a disreputable manufacturer of environmentally dirty vehicles that conceals  
15 its polluting engines rather than promptly remedying them.

16 852. Plaintiff and the Louisiana Subclass suffered ascertainable loss caused by  
17 Volkswagen’s misrepresentations and its concealment of and failure to disclose  
18 material information. Class members who purchased the Affected Vehicles either  
19 would have paid less for their vehicles or would not have purchased or leased them at  
20 all.

21 853. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
22 to refrain from unfair and deceptive acts or practices under the Louisiana CPL. All  
23 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
24 value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and  
25 practices made in the course of Volkswagen’s business

26 854. Volkswagen’s violations present a continuing risk to Plaintiffs as well as  
27 to the general public. Volkswagen’s unlawful acts and practices complained of herein  
28 affect the public interest.

855. As a direct and proximate result of Volkswagen's violations of the Louisiana CPL, Plaintiff and the Louisiana Subclass have suffered injury-in-fact and/or actual damage.

856. Pursuant to LA. REV. STAT. § 51:1409, Plaintiff and the Louisiana Subclass seek to recover actual damages in an amount to be determined at trial; treble damages for Volkswagen's knowing violations of the Louisiana CPL; an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

## COUNT II FRAUD BY CONCEALMENT

857. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

858. This claim is brought on behalf of the Louisiana Subclass.

859. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1           860. Plaintiff and Louisiana Subclass members reasonably relied upon  
2 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
3 representations were false and gravely misleading. As alleged herein, Volkswagen  
4 employed extremely sophisticated methods of deception. Plaintiff and Louisiana  
5 Subclass members did not, and could not, unravel Volkswagen's deception on their  
6 own.

7           861. Volkswagen concealed and suppressed material facts concerning what is  
8 evidently the true culture of Volkswagen—one characterized by an emphasis on  
9 profits and sales above compliance with federal and state clean air laws, and emissions  
10 regulations that are meant to protect the public and consumers. It also emphasized  
11 profits and sales over the trust that Plaintiff and Louisiana Subclass members placed in  
12 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
13 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
14 intentional manipulation of the system. That's just a whole other level of not only  
15 lying to the government, but also lying to your consumer. People buy diesel cars from  
16 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
17 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
18 want to be spewing noxious gases into the environment."

19           862. Necessarily, Volkswagen also took steps to ensure that its employees did  
20 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
21 Louisiana Subclass members. Volkswagen did so in order to boost the reputations of  
22 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
23 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
24 with applicable law, including federal and state clean air laws and emissions  
25 regulations, and that its vehicles likewise comply with applicable law and regulations.  
26 Volkswagen's false representations were material to consumers, both because they  
27 concerned the quality of the Affected Vehicles, including their compliance with  
28

1 applicable federal and state laws and regulations regarding clean air and emissions,  
2 and also because the representations played a significant role in the value of the  
3 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Louisiana  
4 Subclass members, highly valued that the vehicles they were purchasing or leasing  
5 were *clean* diesel cars, and they paid accordingly.

6 863. Volkswagen had a duty to disclose its emissions scheme because  
7 knowledge of the scheme and its details were known and/or accessible only to  
8 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
9 maintenance of its scheme, and because Volkswagen knew the facts were not known  
10 to or reasonably discoverable by Plaintiff or Louisiana Subclass members.  
11 Volkswagen also had a duty to disclose because it made general affirmative  
12 representations about the qualities of its vehicles with respect to emissions standards,  
13 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
14 which were misleading, deceptive, and incomplete without the disclosure of the  
15 additional facts set forth above regarding its emissions scheme, the actual emissions of  
16 its vehicles, its actual philosophy with respect to compliance with federal and state  
17 clean air laws and emissions regulations, and its actual practices with respect to the  
18 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
19 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
20 These omitted and concealed facts were material because they directly impact the  
21 value of the Affected Vehicles purchased or leased by Plaintiff and Louisiana Subclass  
22 members. Whether a manufacturer's products comply with federal and state clean air  
23 laws and emissions regulations, and whether that manufacturer tells the truth with  
24 respect to such compliance or non-compliance, are material concerns to a consumer,  
25 including with respect to the emissions certification testing their vehicles must pass.  
26 Volkswagen represented to Plaintiff and Louisiana Subclass members that they were  
27  
28

1 purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—  
2 except that, secretly, Volkswagen had subverted the testing process thoroughly.

3 864. Volkswagen actively concealed and/or suppressed these material facts, in  
4 whole or in part, to pad and protect its profits and to avoid the perception that its  
5 vehicles did not or could not comply with federal and state laws governing clean air  
6 and emissions, which perception would hurt the brand's image and cost Volkswagen  
7 money, and it did so at the expense of Plaintiff and Louisiana Subclass members.

8 865. On information and belief, Volkswagen has still not made full and  
9 adequate disclosures, and continues to defraud Plaintiff and Louisiana Subclass  
10 members by concealing material information regarding the emissions qualities of its  
11 vehicles and its emissions scheme.

12 866. Plaintiff and Louisiana Subclass members were unaware of the omitted  
13 material facts referenced herein, and they would not have acted as they did if they had  
14 known of the concealed and/or suppressed facts, in that they would not have  
15 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
16 not have continued to drive their heavily polluting vehicles, or would have taken other  
17 affirmative steps in light of the information concealed from them. Plaintiff's and  
18 Louisiana Subclass members' actions were justified. Volkswagen was in exclusive  
19 control of the material facts, and such facts were not known to the public, Plaintiff, or  
20 Louisiana Subclass members.

21 867. Because of the concealment and/or suppression of the facts, Plaintiff and  
22 Louisiana Subclass members have sustained damage because they own vehicles that  
23 are diminished in value as a result of Volkswagen's concealment of the true quality  
24 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
25 the actual emissions qualities and quantities of hundreds of thousands of Volkswagen-  
26 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
27 corporate policies. Had Plaintiff and Louisiana Subclass members been aware of  
28

1 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
2 with applicable federal and state laws and regulations, Plaintiff and Louisiana  
3 Subclass members who purchased or leased new or previously owned vehicles would  
4 have paid less for their vehicles or would not have purchased or leased them at all.

5 868. The value of Plaintiff's and Louisiana Subclass members' vehicles has  
6 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
7 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
8 to Plaintiff's and Louisiana Subclass members' vehicles and made any reasonable  
9 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
10 otherwise would have been fair market value for the vehicles. In addition, Class  
11 members are entitled to damages for loss of use, costs of additional fuel, costs of  
12 unused warranties, and other damages to be proved at trial.

13 869. Accordingly, Volkswagen is liable to Plaintiff and Louisiana Subclass  
14 members for damages in an amount to be proven at trial.

15 870. Volkswagen's acts were done wantonly, maliciously, oppressively,  
16 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
17 Louisiana Subclass members' rights and the representations that Volkswagen made to  
18 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
19 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
20 sufficient to deter such conduct in the future, which amount is to be determined  
21 according to proof.

22 **COUNT III**  
23 **BREACH OF CONTRACT**  
**(BASED ON LOUISIANA LAW)**

24 871. Plaintiff incorporates by reference all preceding allegations as though  
25 fully set forth herein.

26 872. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
27 owned vehicle purchasers in the Louisiana Subclass.  
28

1           873. Volkswagen's misrepresentations and omissions alleged herein, including  
2 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
3 defect and/or defective design as alleged herein, caused Plaintiff and the other  
4 Louisiana Subclass members to make their purchases or leases of their Affected  
5 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
6 Louisiana Subclass members would not have purchased or leased these Affected  
7 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
8 they paid, and/or would have purchased or leased less expensive alternative vehicles  
9 that did not contain the CleanDiesel engine system and which were not marketed as  
10 including such a system. Accordingly, Plaintiff and the other Louisiana Subclass  
11 members overpaid for their Affected Vehicles and did not receive the benefit of their  
12 bargain.

13           874. Each and every sale or lease of an Affected Vehicle by an authorized  
14 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
15 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
16 other Louisiana Subclass members defective Affected Vehicles and by  
17 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
18 defect and/or defective design, including information known to Volkswagen rendering  
19 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
20 equipped with a CleanDiesel engine system.

21           875. As a direct and proximate result of Volkswagen's breach of contract,  
22 Plaintiff and the Louisiana Subclass have been damaged in an amount to be proven at  
23 trial, which shall include, but is not limited to, all compensatory damages, incidental  
24 and consequential damages, and other damages allowed by law.  
25  
26  
27  
28



1 **U. Claims Brought on Behalf of the Maine Subclass**

2 **COUNT I**  
 3 **VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT**  
 4 **(ME. REV. STAT. ANN. TIT. 5 § 205-A, *et seq.*)**

5 876. Plaintiff G. Keating Pepper (“Plaintiff,” for purposes of all Maine  
 6 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 7 set forth herein.

8 877. Plaintiff intends to assert a claim under the Maine Unfair Trade Practices  
 9 Act (“Maine UTPA”) which makes unlawful “[u]nfair methods of competition and  
 10 unfair or deceptive acts or practices in the conduct of any trade or commerce....” ME.  
 11 REV. STAT. ANN. TIT. 5 § 207. Plaintiffs will make a demand in satisfaction of ME.  
 12 REV. STAT. ANN. TIT. 5, § 213(A), and may amend this Complaint to assert claims  
 13 under the Maine UTPA once the required 30 days have elapsed. This paragraph is  
 14 included for purposes of notice only and is not intended to actually assert a claim  
 15 under the Maine UTPA.

16 **COUNT II**  
 17 **FRAUD BY CONCEALMENT**

18 878. Plaintiffs reallege and incorporate by reference all paragraphs as though  
 19 fully set forth herein.

20 879. This claim is brought on behalf of the Maine Subclass.

21 880. Volkswagen intentionally concealed and suppressed material facts  
 22 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
 23 notwithstanding references in the very model names of the subject vehicles as “Clean  
 24 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
 25 secret scheme to evade federal and state vehicle emissions standards by installing  
 26 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
 27 which contributes to the creation of ozone and smog. The software installed on the  
 28 vehicles at issue was designed nefariously to kick-in during emissions certification  
 testing, such that the vehicles would show far lower emissions than when actually

1 operating on the road. The result was what Volkswagen intended: vehicles passed  
2 emissions certifications by way of deliberately induced false readings. Reportedly,  
3 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
4 vehicles at up to 40 times applicable standards.

5 881. Plaintiff and Maine Subclass members reasonably relied upon  
6 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
7 representations were false and gravely misleading. As alleged herein, Volkswagen  
8 employed extremely sophisticated methods of deception. Plaintiff and Maine Subclass  
9 members did not, and could not, unravel Volkswagen's deception on their own.

10 882. Volkswagen concealed and suppressed material facts concerning what is  
11 evidently the true culture of Volkswagen – one characterized by an emphasis on  
12 profits and sales above compliance with federal and state clean air laws, and emissions  
13 regulations that are meant to protect the public and consumers. It also emphasized  
14 profits and sales over the trust that Plaintiff and Maine Subclass members placed in its  
15 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
16 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
17 intentional manipulation of the system. That's just a whole other level of not only  
18 lying to the government, but also lying to your consumer. People buy diesel cars from  
19 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
20 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
21 want to be spewing noxious gases into the environment."

22 883. Necessarily, Volkswagen also took steps to ensure that its employees did  
23 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
24 Maine Subclass members. Volkswagen did so in order to boost the reputations of its  
25 vehicles and to falsely assure purchasers and lessors of its vehicles, including  
26 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
27 with applicable law, including federal and state clean air laws and emissions  
28

1 regulations, and that its vehicles likewise comply with applicable law and regulations.  
2 Volkswagen's false representations were material to consumers, both because they  
3 concerned the quality of the Affected Vehicles, including their compliance with  
4 applicable federal and state laws and regulations regarding clean air and emissions,  
5 and also because the representations played a significant role in the value of the  
6 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Maine  
7 Subclass members, highly valued that the vehicles they were purchasing or leasing  
8 were *clean* diesel cars, and they paid accordingly.

9 884. Volkswagen had a duty to disclose its emissions scheme because  
10 knowledge of the scheme and its details were known and/or accessible only to  
11 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
12 maintenance of its scheme, and because Volkswagen knew the facts were not known  
13 to or reasonably discoverable by Plaintiff or Maine Subclass members. Volkswagen  
14 also had a duty to disclose because it made general affirmative representations about  
15 the qualities of its vehicles with respect to emissions standards, starting with  
16 references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were  
17 misleading, deceptive, and incomplete without the disclosure of the additional facts set  
18 forth above regarding its emissions scheme, the actual emissions of its vehicles, its  
19 actual philosophy with respect to compliance with federal and state clean air laws and  
20 emissions regulations, and its actual practices with respect to the vehicles at issue.  
21 Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to  
22 disclose not just the partial truth, but the entire truth. These omitted and concealed  
23 facts were material because they directly impact the value of the Affected Vehicles  
24 purchased or leased by Plaintiff and Maine Subclass members. Whether a  
25 manufacturer's products comply with federal and state clean air laws and emissions  
26 regulations, and whether that manufacturer tells the truth with respect to such  
27 compliance or non-compliance, are material concerns to a consumer, including with  
28

1 respect to the emissions certification testing their vehicles must pass. Volkswagen  
2 represented to Plaintiff and Maine Subclass members that they were purchasing *clean*  
3 diesel vehicles, and certification testing appeared to confirm this—except that,  
4 secretly, Volkswagen had subverted the testing process thoroughly.

5 885. Volkswagen actively concealed and/or suppressed these material facts, in  
6 whole or in part, to pad and protect its profits and to avoid the perception that its  
7 vehicles did not, or could not, comply with federal and state laws governing clean air  
8 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
9 money, and it did so at the expense of Plaintiff and Maine Subclass members.

10 886. On information and belief, Volkswagen has still not made full and  
11 adequate disclosures, and continues to defraud Plaintiff and Maine Subclass members  
12 by concealing material information regarding the emission qualities of its vehicles and  
13 its emissions scheme.

14 887. Plaintiff and Maine Subclass members were unaware of the omitted  
15 material facts referenced herein, and they would not have acted as they did if they had  
16 known of the concealed and/or suppressed facts, in that they would not have  
17 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
18 not have continued to drive their heavily polluting vehicles, or would have taken other  
19 affirmative steps in light of the information concealed from them. Plaintiff’s and  
20 Maine Subclass members’ actions were justified. Volkswagen was in exclusive  
21 control of the material facts, and such facts were not known to the public, Plaintiff, or  
22 Maine Subclass members.

23 888. Because of the concealment and/or suppression of the facts, Plaintiff and  
24 Maine Subclass members have sustained damage because they own vehicles that are  
25 diminished in value as a result of Volkswagen’s concealment of the true quality and  
26 quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the  
27 actual emission qualities and quantities of hundreds of thousands of Volkswagen- and  
28

1 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
2 policies. Had Plaintiff and Maine Subclass members been aware of Volkswagen's  
3 emissions scheme, and the company's callous disregard for compliance with  
4 applicable federal and state laws and regulations, Plaintiff and Maine Subclass  
5 members who purchased or leased new or previously owned vehicles would have paid  
6 less for their vehicles or would not have purchased or leased them at all.

7 889. The value of Plaintiff's and Maine Subclass members' vehicles has  
8 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
9 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
10 to Plaintiff's and Maine Subclass members' vehicles and made any reasonable  
11 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
12 otherwise would have been fair market value for the vehicles. In addition, Class  
13 members are entitled to damages for loss of use, costs of additional fuel, costs of  
14 unused warranties, and other damages to be proved at trial.

15 890. Accordingly, Volkswagen is liable to Plaintiff and Maine Subclass  
16 members for damages in an amount to be proven at trial.

17 891. Volkswagen's acts were done wantonly, maliciously, oppressively,  
18 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Maine  
19 Subclass members' rights and the representations that Volkswagen made to them, in  
20 order to enrich Volkswagen. To the extent permitted under applicable law,  
21 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
22 sufficient to deter such conduct in the future, which amount is to be determined  
23 according to proof.

24 **COUNT III**  
25 **BREACH OF CONTRACT**  
**(Based on Maine Law)**

26 892. Plaintiff incorporates by reference all preceding allegations as though  
27 fully set forth herein.  
28

1           893. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
2 owned vehicle purchasers in the Maine Subclass.

3           894. Volkswagen's misrepresentations and omissions alleged herein, including  
4 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
5 defect and/or defective design as alleged herein, caused Plaintiff and the other Maine  
6 Subclass members to make their purchases or leases of their Affected Vehicles.  
7 Absent those misrepresentations and omissions, Plaintiff and the other Maine Subclass  
8 members would not have purchased or leased these Affected Vehicles, would not have  
9 purchased or leased these Affected Vehicles at the prices they paid, and/or would have  
10 purchased or leased less expensive alternative vehicles that did not contain the  
11 CleanDiesel engine system and which were not marketed as including such a system.  
12 Accordingly, Plaintiff and the other Maine Subclass members overpaid for their  
13 Affected Vehicles and did not receive the benefit of their bargain.

14           895. Each and every sale or lease of an Affected Vehicle by an authorized  
15 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
16 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
17 other Maine Subclass members defective Affected Vehicles and by misrepresenting or  
18 failing to disclose the existence of the CleanDiesel engine system's defect and/or  
19 defective design, including information known to Volkswagen rendering each  
20 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
21 equipped with a CleanDiesel engine system.

22           896. As a direct and proximate result of Volkswagen's breach of contract,  
23 Plaintiff and the Maine Subclass have been damaged in an amount to be proven at  
24 trial, which shall include, but is not limited to, all compensatory damages, incidental  
25 and consequential damages, and other damages allowed by law.  
26  
27  
28

**V. Claims Brought on Behalf of the Maryland Subclass**

**COUNT I  
VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT  
(MD. CODE COM. LAW § 13-101, *ET SEQ.*)**

897. Plaintiff Devan Wang (“Plaintiff,” for purposes of all Maryland Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

898. This claim is brought only on behalf of members of the Maryland Subclass.

899. Volkswagen, Plaintiff, and the Maryland Subclass are “persons” within the meaning of MD. CODE COM. LAW § 13-101(h).

900. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. Volkswagen participated in misleading, false, or deceptive acts that violated the Maryland CPA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Maryland CPA.

901. Volkswagen’s actions as set forth above occurred in the conduct of trade or commerce.

902. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.



1           903. Volkswagen has known of its use of the “defeat device” and the true  
2 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
3 information until recently.

4           904. Volkswagen was also aware that it valued profits over environmental  
5 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
6 distributing vehicles throughout the United States that did not comply with EPA  
7 regulations. Volkswagen concealed this information as well.

8           905. By failing to disclose and by actively concealing the “defeat device” and  
9 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
10 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
11 by presenting itself as a reputable manufacturer that valued safety, environmental  
12 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
13 Volkswagen engaged in unfair and deceptive business practices in violation of the  
14 Maryland CPA.

15           906. In the course of Volkswagen’s business, it willfully failed to disclose and  
16 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
17 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
18 compounded the deception by repeatedly asserting that the Affected Vehicles were  
19 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
20 be a reputable manufacturer that valued safety, environmental cleanliness and  
21 efficiency, and stood behind its vehicles once they are on the road.

22           907. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
23 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
24 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
25 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
26 value of the Affected Vehicles.

1           908. Volkswagen intentionally and knowingly misrepresented material facts  
2 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Maryland  
3 Subclass.

4           909. Volkswagen knew or should have known that its conduct violated the  
5 Maryland CPA.

6           910. As alleged above, Volkswagen made material statements about the safety,  
7 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
8 and Audi brands that were either false or misleading.

9           911. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
10 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
11 cleanliness and integrity at Volkswagen, because Volkswagen:

- 12           a. Possessed exclusive knowledge that it valued profits  
13 over environmental cleanliness, efficiency, and  
14 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 15           b. Intentionally concealed the foregoing from Plaintiffs;  
16 and/or
- 17           c. Made incomplete representations about the safety,  
18 cleanliness, efficiency and reliability of the Affected  
19 Vehicles generally, and the use of the “defeat device”  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
20 facts from Plaintiffs that contradicted these  
representations.

21           912. Because Volkswagen fraudulently concealed the “defeat device” and the  
22 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
23 of negative publicity once the use of the “defeat device” and true characteristics of the  
24 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
25 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
26 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
27 would be.  
28

1           913. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
2 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
3 and the Maryland Subclass. A vehicle made by a reputable manufacturer of  
4 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
5 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
6 the amount its cars pollutes rather than make environmentally friendly vehicles.

7           914. Plaintiff and the Maryland Subclass suffered ascertainable loss caused by  
8 Volkswagen’s misrepresentations and its concealment of and failure to disclose  
9 material information. Class members who purchased the Affected Vehicles either  
10 would have paid less for their vehicles or would not have purchased or leased them at  
11 all.

12           915. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
13 to refrain from unfair and deceptive acts or practices under the Maryland CPA. All  
14 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
15 value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and  
16 practices made in the course of Volkswagen’s business.

17           916. Volkswagen’s violations present a continuing risk to Plaintiffs as well as  
18 to the general public. Volkswagen’s unlawful acts and practices complained of herein  
19 affect the public interest.

20           917. As a direct and proximate result of Volkswagen’s violations of the  
21 Maryland CPA, Plaintiff and the Maryland Subclass have suffered injury-in-fact  
22 and/or actual damage.

23           918. Pursuant to MD. CODE COM. LAW § 13-408, Plaintiff and the Maryland  
24 Subclass seek actual damages, attorneys’ fees, and any other just and proper relief  
25 available under the Maryland CPA.  
26  
27  
28

**COUNT II  
FRAUD BY CONCEALMENT**

1919. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1920. This claim is brought on behalf of the Maryland Subclass.

1921. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1922. Plaintiff and Maryland Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Maryland Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

1923. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized

1 profits and sales over the trust that Plaintiff and Maryland Subclass members placed in  
2 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
3 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
4 intentional manipulation of the system. That’s just a whole other level of not only  
5 lying to the government, but also lying to your consumer. People buy diesel cars from  
6 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
7 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
8 want to be spewing noxious gases into the environment.”

9 924. Necessarily, Volkswagen also took steps to ensure that its employees did  
10 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
11 Maryland Subclass members. Volkswagen did so in order to boost the reputations of  
12 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
13 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
14 with applicable law, including federal and state clean air laws and emissions  
15 regulations, and that its vehicles likewise comply with applicable law and regulations.  
16 Volkswagen’s false representations were material to consumers, both because they  
17 concerned the quality of the Affected Vehicles, including their compliance with  
18 applicable federal and state laws and regulations regarding clean air and emissions,  
19 and also because the representations played a significant role in the value of the  
20 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Maryland  
21 Subclass members, highly valued that the vehicles they were purchasing or leasing  
22 were *clean* diesel cars, and they paid accordingly.

23 925. Volkswagen had a duty to disclose its emissions scheme because  
24 knowledge of the scheme and its details were known and/or accessible only to  
25 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
26 maintenance of its scheme, and because Volkswagen knew the facts were not known  
27 to or reasonably discoverable by Plaintiff or Maryland Subclass members.  
28

1 Volkswagen also had a duty to disclose because it made general affirmative  
2 representations about the qualities of its vehicles with respect to emissions standards,  
3 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
4 which were misleading, deceptive, and incomplete without the disclosure of the  
5 additional facts set forth above regarding its emissions scheme, the actual emissions of  
6 its vehicles, its actual philosophy with respect to compliance with federal and state  
7 clean air laws and emissions regulations, and its actual practices with respect to the  
8 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
9 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
10 These omitted and concealed facts were material because they directly impact the  
11 value of the Affected Vehicles purchased or leased by Plaintiff and Maryland Subclass  
12 members. Whether a manufacturer's products comply with federal and state clean air  
13 laws and emissions regulations, and whether that manufacturer tells the truth with  
14 respect to such compliance or non-compliance, are material concerns to a consumer,  
15 including with respect to the emissions certification testing their vehicles must pass.  
16 Volkswagen represented to Plaintiff and Maryland Subclass members that they were  
17 purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—  
18 except that, secretly, Volkswagen had subverted the testing process thoroughly.

19 926. Volkswagen actively concealed and/or suppressed these material facts, in  
20 whole or in part, to pad and protect its profits and to avoid the perception that its  
21 vehicles did not or could not comply with federal and state laws governing clean air  
22 and emissions, which perception would hurt the brand's image and cost Volkswagen  
23 money, and it did so at the expense of Plaintiff and Maryland Subclass members.

24 927. On information and belief, Volkswagen has still not made full and  
25 adequate disclosures, and continues to defraud Plaintiff and Maryland Subclass  
26 members by concealing material information regarding the emissions qualities of its  
27 vehicles and its emissions scheme.

1           928. Plaintiff and Maryland Subclass members were unaware of the omitted  
2 material facts referenced herein, and they would not have acted as they did if they had  
3 known of the concealed and/or suppressed facts, in that they would not have  
4 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
5 not have continued to drive their heavily polluting vehicles, or would have taken other  
6 affirmative steps in light of the information concealed from them. Plaintiff’s and  
7 Maryland Subclass members’ actions were justified. Volkswagen was in exclusive  
8 control of the material facts, and such facts were not known to the public, Plaintiff, or  
9 Maryland Subclass members.

10           929. Because of the concealment and/or suppression of the facts, Plaintiff and  
11 Maryland Subclass members have sustained damage because they own vehicles that  
12 are diminished in value as a result of Volkswagen’s concealment of the true quality  
13 and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose  
14 the actual emissions qualities and quantities of hundreds of thousands of Volkswagen-  
15 and Audi-branded vehicles and the serious issues engendered by Volkswagen’s  
16 corporate policies. Had Plaintiff and Maryland Subclass members been aware of  
17 Volkswagen’s emissions scheme, and the company’s callous disregard for compliance  
18 with applicable federal and state laws and regulations, Plaintiff and Maryland Subclass  
19 members who purchased or leased new or previously owned vehicles would have paid  
20 less for their vehicles or would not have purchased or leased them at all.

21           930. The value of Plaintiff’s and Maryland Subclass members’ vehicles has  
22 diminished as a result of Volkswagen’s fraudulent concealment of its emissions  
23 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
24 to Plaintiff’s and Maryland Subclass members’ vehicles and made any reasonable  
25 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
26 otherwise would have been fair market value for the vehicles. In addition, Class  
27  
28



1 members are entitled to damages for loss of use, costs of additional fuel, costs of  
2 unused warranties, and other damages to be proved at trial.

3 931. Accordingly, Volkswagen is liable to Plaintiff and Maryland Subclass  
4 members for damages in an amount to be proven at trial.

5 932. Volkswagen's acts were done wantonly, maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
7 Maryland Subclass members' rights and the representations that Volkswagen made to  
8 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
9 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
10 sufficient to deter such conduct in the future, which amount is to be determined  
11 according to proof.

12 **COUNT III**  
13 **BREACH OF CONTRACT**  
**(BASED ON MARYLAND LAW)**

14 933. Plaintiff incorporates by reference all preceding allegations as though  
15 fully set forth herein.

16 934. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
17 owned vehicle purchasers in the Maryland Subclass.

18 935. Volkswagen's misrepresentations and omissions alleged herein, including  
19 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
20 defect and/or defective design as alleged herein, caused Plaintiff and the Maryland  
21 Subclass members to make their purchases or leases of their Affected Vehicles.  
22 Absent those misrepresentations and omissions, Plaintiff and the Maryland Subclass  
23 members would not have purchased or leased these Affected Vehicles, would not have  
24 purchased or leased these Affected Vehicles at the prices they paid, and/or would have  
25 purchased or leased less expensive alternative vehicles that did not contain the  
26 CleanDiesel engine system and which were not marketed as including such a system.  
27  
28

1 Accordingly, Plaintiff and the Maryland Subclass members overpaid for their Affected  
2 Vehicles and did not receive the benefit of their bargain.

3 936. Each and every sale or lease of an Affected Vehicle by an authorized  
4 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
5 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
6 Maryland Subclass members defective Affected Vehicles and by misrepresenting or  
7 failing to disclose the existence of the CleanDiesel engine system's defect and/or  
8 defective design, including information known to Volkswagen rendering each  
9 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
10 equipped with a CleanDiesel engine system.

11 937. As a direct and proximate result of Volkswagen's breach of contract,  
12 Plaintiff and the Maryland Subclass have been damaged in an amount to be proven at  
13 trial, which shall include, but is not limited to, all compensatory damages, incidental  
14 and consequential damages, and other damages allowed by law.

15 **W. Claims Brought on Behalf of the Massachusetts Subclass**

16 **COUNT I**  
17 **VIOLATIONS OF THE MASSACHUSETTS CONSUMER**  
18 **PROTECTION ACT**  
19 **(MASS. GEN. LAWS CH. 93A)**

20 938. Plaintiff Robert Hooker ("Plaintiff," for purposes of all Massachusetts  
21 Subclass Counts) incorporates by reference all preceding allegations as though fully  
22 set forth herein.

23 939. Plaintiff intends to assert a claim under the Massachusetts Consumer  
24 Protection Act ("MCPA"), which makes it unlawful to engage in any "[u]nfair  
25 methods of competition or deceptive acts or practices in the conduct of any trade or  
26 commerce." MASS. GEN. LAWS CH. 93A, § 2(1). Plaintiffs will make a demand in  
27 satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3), and may amend this Complaint to  
28 assert claims under the MCPA once the required 30 days have elapsed. This paragraph

1 is included for purposes of notice only and is not intended to actually assert a claim  
2 under the MCPA.

3 **COUNT II**  
4 **BREACH OF CONTRACT**  
5 **(BASED ON MASSACHUSETTS LAW)**

6 940. Plaintiff incorporates by reference all preceding allegations as though  
7 fully set forth herein.

8 941. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
9 owned vehicle purchasers in the Massachusetts Subclass.

10 942. Volkswagen's misrepresentations and omissions alleged herein, including  
11 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
12 defect and/or defective design as alleged herein, caused Plaintiff and the  
13 Massachusetts Subclass members to make their purchases or leases of their Affected  
14 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the  
15 Massachusetts Subclass members would not have purchased or leased these Affected  
16 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
17 they paid, and/or would have purchased or leased less expensive alternative vehicles  
18 that did not contain the CleanDiesel engine system and which were not marketed as  
19 including such a system. Accordingly, Plaintiff and the Massachusetts Subclass  
20 members overpaid for their Affected Vehicles and did not receive the benefit of their  
21 bargain.

22 943. Each and every sale or lease of an Affected Vehicle by an authorized  
23 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
24 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
25 Massachusetts Subclass members defective Affected Vehicles and by misrepresenting  
26 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
27 defective design, including information known to Volkswagen rendering each  
28

1 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
2 equipped with a CleanDiesel engine system.

3 944. As a direct and proximate result of Volkswagen's breach of contract,  
4 Plaintiff and the Massachusetts Subclass have been damaged in an amount to be  
5 proven at trial, which shall include, but is not limited to, all compensatory damages,  
6 incidental and consequential damages, and other damages allowed by law.

7 **COUNT III**  
8 **FRAUDULENT CONCEALMENT**  
9 **(BASED ON MASSACHUSETTS LAW)**

10 945. Plaintiff incorporates by reference all preceding allegations as though  
11 fully set forth herein.

12 946. Plaintiff brings this Count on behalf of the Massachusetts Subclass.

13 947. Volkswagen intentionally concealed that the CleanDiesel engine systems  
14 were not EPA-compliant and used a "defeat device," or acted with reckless disregard  
15 for the truth, and denied Plaintiff and the Massachusetts Subclass members  
16 information that is highly relevant to their purchasing decision.

17 948. Volkswagen further affirmatively misrepresented to Plaintiff in  
18 advertising and other forms of communication, including standard and uniform  
19 material provided with each car, that the Affected Vehicles it was selling were new,  
20 had no significant defects, complied with EPA regulations and would perform and  
21 operate properly when driven in normal usage.

22 949. Volkswagen knew these representations were false when made.

23 950. The Affected Vehicles purchased or leased by Plaintiff and the  
24 Massachusetts Subclass members were, in fact, defective, non-EPA compliant, unsafe,  
25 and unreliable because the Affected Vehicles contained faulty and defective  
26 CleanDiesel engine system, as alleged herein.

27 951. Volkswagen had a duty to disclose that these Affected Vehicles were  
28 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions

1 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
2 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
3 Massachusetts Subclass members relied on Volkswagen’s material representations that  
4 the Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
5 and free from defects.

6 952. The aforementioned concealment was material because if it had been  
7 disclosed Plaintiff and the Massachusetts Subclass members would not have bought or  
8 leased the Affected Vehicles, or would not have bought or leased those Vehicles at the  
9 prices they paid.

10 953. The aforementioned representations were material because they were  
11 facts that would typically be relied on by a person purchasing or leasing a new motor  
12 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
13 false because it knew that it had to use the “defeat device” in order for Affected  
14 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
15 false statements in order to sell Affected Vehicles.

16 954. Plaintiff and the Massachusetts Subclass members relied on  
17 Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and  
18 defective nature of the CleanDiesel engine system and Volkswagen’s affirmative  
19 assurance that its Affected Vehicles were safe and reliable, and other similar false  
20 statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

21 955. As a result of their reliance, Plaintiff and the Massachusetts Subclass  
22 members have been injured in an amount to be proven at trial, including, but not  
23 limited to, their lost benefit of the bargain and overpayment at the time of purchase or  
24 lease and/or the diminished value of their Affected Vehicles.

25 956. Volkswagen’s conduct was knowing, intentional, with malice,  
26 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
27  
28

1 Plaintiff and the Massachusetts Subclass members. Plaintiff and the Massachusetts  
2 Subclass members are therefore entitled to an award of punitive damages.

3 **X. Claims Brought on Behalf of the Michigan Subclass**

4 **COUNT I**  
5 **VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT**  
6 **(MICH. COMP. LAWS § 445.903, *ET SEQ.*)**

7 957. Plaintiff Matthew Olovson (“Plaintiff,” for purposes of all Michigan  
8 Subclass Counts) incorporates by reference all preceding allegations as though fully  
9 set forth herein.

10 958. Plaintiff brings this Count on behalf of the Michigan Subclass.

11 959. Plaintiff and the Michigan Subclass members are “person[s]” within the  
12 meaning of the MICH. COMP. LAWS § 445.902(1)(d).

13 960. At all relevant times hereto, Volkswagen was a “person” engaged in  
14 “trade or commerce” within the meaning of the MICH. COMP. LAWS § 445.902(1)(d)  
15 and (g).

16 961. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits  
17 “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of  
18 trade or commerce ....” MICH. COMP. LAWS § 445.903(1). Volkswagen engaged in  
19 unfair, unconscionable, or deceptive methods, acts or practices prohibited by the  
20 Michigan CPA, including: “(c) Representing that goods or services have . . .  
21 characteristics . . . that they do not have . . . .;” “(e) Representing that goods or  
22 services are of a particular standard . . . if they are of another;” “(i) Making false or  
23 misleading statements of fact concerning the reasons for, existence of, or amounts of  
24 price reductions;” “(s) Failing to reveal a material fact, the omission of which tends to  
25 mislead or deceive the consumer, and which fact could not reasonably be known by  
26 the consumer;” “(bb) Making a representation of fact or statement of fact material to  
27 the transaction such that a person reasonably believes the represented or suggested  
28 state of affairs to be other than it actually is;” and “(cc) Failing to reveal facts that are

1 material to the transaction in light of representations of fact made in a positive  
2 manner.” MICH. COMP. LAWS § 445.903(1). By fraudulently installing the “defeat  
3 device” to make it appear that its CleanDiesel engine systems complied with EPA  
4 regulations, Volkswagen participated in unfair, deceptive, and unconscionable acts  
5 that violated the Michigan CPA.

6 962. In the course of its business, Volkswagen installed the “defeat device”  
7 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
8 and otherwise engaged in activities with a tendency or capacity to deceive.  
9 Volkswagen also engaged in unlawful trade practices by employing deception,  
10 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
11 omission of any material fact with intent that others rely upon such concealment,  
12 suppression or omission, in connection with the sale of Affected Vehicles.

13 963. Volkswagen has known of its use of the “defeat device” and the true  
14 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
15 information until recently.

16 964. Volkswagen was also aware that it valued profits over environmental  
17 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
18 distributing vehicles throughout the United States that did not comply with EPA  
19 regulations. Volkswagen concealed this information as well.

20 965. By failing to disclose and by actively concealing the “defeat device” and  
21 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
22 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
23 by presenting itself as a reputable manufacturer that valued safety, environmental  
24 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
25 Volkswagen engaged in unfair, unconscionable, and deceptive business practices in  
26 violation of the Michigan CPA.



1           966. In the course of Volkswagen's business, it willfully failed to disclose and  
 2 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
 3 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
 4 compounded the deception by repeatedly asserting that the Affected Vehicles were  
 5 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
 6 be a reputable manufacturer that valued safety, environmental cleanliness and  
 7 efficiency, and stood behind its vehicles once they are on the road.

8           967. Volkswagen's unfair or deceptive acts or practices were likely to and did  
 9 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
 10 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 11 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 12 and the true value of the Affected Vehicles.

13           968. Volkswagen intentionally and knowingly misrepresented material facts  
 14 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Michigan  
 15 Subclass.

16           969. Volkswagen knew or should have known that its conduct violated the  
 17 Michigan CPA.

18           970. As alleged above, Volkswagen made material statements about the safety,  
 19 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
 20 and Audi brands that were either false or misleading.

21           971. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 22 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 23 cleanliness and integrity at Volkswagen, because Volkswagen:

- 24           a. Possessed exclusive knowledge that it valued profits  
 25 over environmental cleanliness, efficiency, and  
 26 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 27           b. Intentionally concealed the foregoing from Plaintiffs;  
 28 and/or

- 1                   c.     Made incomplete representations about the safety,  
2                   cleanliness, efficiency and reliability of the Affected  
3                   Vehicles generally, and the use of the “defeat device”  
4                   and true nature of the CleanDiesel engine system in  
5                   particular, while purposefully withholding material  
6                   facts from Plaintiffs that contradicted these  
7                   representations.

8                   972. Because Volkswagen fraudulently concealed the “defeat device” and the  
9                   true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
10                  of negative publicity once the use of the “defeat device” and true characteristics of the  
11                  CleanDiesel engine system finally began to be disclosed, the value of the Affected  
12                  Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
13                  Volkswagen’s conduct, they are now worth significantly less than they otherwise  
14                  would be.

15                  973. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
16                  of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
17                  and the Michigan Subclass. A vehicle made by a reputable manufacturer of  
18                  environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
19                  made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
20                  the amount its cars pollutes rather than make environmentally friendly vehicles.

21                  974. Plaintiff and the Michigan Subclass suffered ascertainable loss caused by  
22                  Volkswagen’s misrepresentations and its concealment of and failure to disclose  
23                  material information. Class members who purchased the Affected Vehicles either  
24                  would have paid less for their vehicles or would not have purchased or leased them at  
25                  all.

26                  975. Regardless of time of purchase or lease, no Plaintiffs would have  
27                  maintained and continued to drive their vehicles had they been aware of Volkswagen’s  
28                  misconduct. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
29                  to refrain from unfair and deceptive acts or practices under the Michigan CPA. All  
30                  owners of Affected Vehicles suffered ascertainable loss in the form of the diminished

1 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
2 practices made in the course of Volkswagen's business.

3 976. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
4 to the general public. Volkswagen's unlawful acts and practices complained of herein  
5 affect the public interest.

6 977. As a direct and proximate result of Volkswagen's violations of the  
7 Michigan CPA, Plaintiff and the Michigan Subclass have suffered injury-in-fact  
8 and/or actual damage.

9 978. Plaintiffs seek injunctive relief to enjoin Volkswagen from continuing its  
10 unfair and deceptive acts; monetary relief against Volkswagen measured as the greater  
11 of (a) actual damages in an amount to be determined at trial and (b) statutory damages  
12 in the amount of \$250 for Plaintiffs and each Michigan Subclass member; reasonable  
13 attorneys' fees; and any other just and proper relief available under MICH. COMP.  
14 LAWS § 445.911.

15 979. Plaintiffs also seek punitive damages against Volkswagen because it  
16 carried out despicable conduct with willful and conscious disregard of the rights and  
17 safety of others. Volkswagen intentionally and willfully misrepresented the safety,  
18 cleanliness, efficiency and reliability of the Affected Vehicles, deceived Plaintiff and  
19 Michigan Subclass Members on life-or-death matters, and concealed material facts  
20 that only they knew, all to avoid the expense and public relations nightmare of  
21 correcting a deadly flaw in vehicles it repeatedly promised Plaintiff and Michigan  
22 Subclass Members were safe. Volkswagen's unlawful conduct constitutes malice,  
23 oppression, and fraud warranting punitive damages.

24 **COUNT II**  
25 **FRAUD BY CONCEALMENT**

26 980. Plaintiffs reallege and incorporate by reference all paragraphs as though  
27 fully set forth herein.

28 981. This claim is brought on behalf of the Michigan Subclass.

1           982. Volkswagen intentionally concealed and suppressed material facts  
2 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
3 notwithstanding references in the very model names of the subject vehicles as “Clean  
4 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
5 secret scheme to evade federal and state vehicle emissions standards by installing  
6 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
7 which contributes to the creation of ozone and smog. The software installed on the  
8 vehicles at issue was designed nefariously to kick-in during emissions certification  
9 testing, such that the vehicles would show far lower emissions than when actually  
10 operating on the road. The result was what Volkswagen intended: vehicles passed  
11 emissions certifications by way of deliberately induced false readings. Reportedly,  
12 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
13 vehicles at up to 40 times applicable standards.

14           983. Plaintiff and Michigan Subclass members reasonably relied upon  
15 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s  
16 representations were false and gravely misleading. As alleged herein, Volkswagen  
17 employed extremely sophisticated methods of deception. Plaintiff and Michigan  
18 Subclass members did not, and could not, unravel Volkswagen’s deception on their  
19 own.

20           984. Volkswagen concealed and suppressed material facts concerning what is  
21 evidently the true culture of Volkswagen—one characterized by an emphasis on  
22 profits and sales above compliance with federal and state clean air laws, and emissions  
23 regulations that are meant to protect the public and consumers. It also emphasized  
24 profits and sales over the trust that Plaintiff and Michigan Subclass members placed in  
25 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
26 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
27 intentional manipulation of the system. That’s just a whole other level of not only  
28

1 lying to the government, but also lying to your consumer. People buy diesel cars from  
2 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
3 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
4 want to be spewing noxious gases into the environment.”

5 985. Necessarily, Volkswagen also took steps to ensure that its employees did  
6 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
7 Michigan Subclass members. Volkswagen did so in order to boost the reputations of  
8 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
9 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
10 with applicable law, including federal and state clean air laws and emissions  
11 regulations, and that its vehicles likewise comply with applicable law and regulations.  
12 Volkswagen’s false representations were material to consumers, both because they  
13 concerned the quality of the Affected Vehicles, including their compliance with  
14 applicable federal and state laws and regulations regarding clean air and emissions,  
15 and also because the representations played a significant role in the value of the  
16 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Michigan  
17 Subclass members, highly valued that the vehicles they were purchasing or leasing  
18 were *clean* diesel cars, and they paid accordingly.

19 986. Volkswagen had a duty to disclose its emissions scheme because  
20 knowledge of the scheme and its details were known and/or accessible only to  
21 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
22 maintenance of its scheme, and because Volkswagen knew the facts were not known  
23 to or reasonably discoverable by Plaintiff or Michigan Subclass members.  
24 Volkswagen also had a duty to disclose because it made general affirmative  
25 representations about the qualities of its vehicles with respect to emissions standards,  
26 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
27 which were misleading, deceptive, and incomplete without the disclosure of the  
28

1 additional facts set forth above regarding its emissions scheme, the actual emissions of  
2 its vehicles, its actual philosophy with respect to compliance with federal and state  
3 clean air laws and emissions regulations, and its actual practices with respect to the  
4 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
5 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
6 These omitted and concealed facts were material because they directly impact the  
7 value of the Affected Vehicles purchased or leased by Plaintiff and Michigan Subclass  
8 members. Whether a manufacturer's products comply with federal and state clean air  
9 laws and emissions regulations, and whether that manufacturer tells the truth with  
10 respect to such compliance or non-compliance, are material concerns to a consumer,  
11 including with respect to the emissions certification testing their vehicles must pass.  
12 Volkswagen represented to Plaintiff and Michigan Subclass members that they were  
13 purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—  
14 except that, secretly, Volkswagen had subverted the testing process thoroughly.

15 987. Volkswagen actively concealed and/or suppressed these material facts, in  
16 whole or in part, to pad and protect its profits and to avoid the perception that its  
17 vehicles did not or could not comply with federal and state laws governing clean air  
18 and emissions, which perception would hurt the brand's image and cost Volkswagen  
19 money, and it did so at the expense of Plaintiff and Michigan Subclass members.

20 988. On information and belief, Volkswagen has still not made full and  
21 adequate disclosures, and continues to defraud Plaintiff and Michigan Subclass  
22 members by concealing material information regarding the emissions qualities of its  
23 vehicles and its emissions scheme.

24 989. Plaintiff and Michigan Subclass members were unaware of the omitted  
25 material facts referenced herein, and they would not have acted as they did if they had  
26 known of the concealed and/or suppressed facts, in that they would not have  
27 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
28

1 not have continued to drive their heavily polluting vehicles, or would have taken other  
2 affirmative steps in light of the information concealed from them. Plaintiff's and  
3 Michigan Subclass members' actions were justified. Volkswagen was in exclusive  
4 control of the material facts, and such facts were not known to the public, Plaintiff, or  
5 Michigan Subclass members.

6 990. Because of the concealment and/or suppression of the facts, Plaintiff and  
7 Michigan Subclass members have sustained damage because they own vehicles that  
8 are diminished in value as a result of Volkswagen's concealment of the true quality  
9 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
10 the actual emissions qualities and quantities of hundreds of thousands of Volkswagen-  
11 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
12 corporate policies. Had Plaintiff and Michigan Subclass members been aware of  
13 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
14 with applicable federal and state laws and regulations, Plaintiff and Michigan Subclass  
15 members who purchased or leased new or previously owned vehicles would have paid  
16 less for their vehicles or would not have purchased or leased them at all.

17 991. The value of Plaintiff's and Michigan Subclass members' vehicles has  
18 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
19 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
20 to Plaintiff's and Michigan Subclass members' vehicles and made any reasonable  
21 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
22 otherwise would have been fair market value for the vehicles. In addition, Class  
23 members are entitled to damages for loss of use, costs of additional fuel, costs of  
24 unused warranties, and other damages to be proved at trial.

25 992. Accordingly, Volkswagen is liable to Plaintiff and Michigan Subclass  
26 members for damages in an amount to be proven at trial.  
27  
28



993. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Michigan Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON MICHIGAN LAW)**

994. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

995. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Michigan Subclass.

996. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Michigan Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Michigan Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Michigan Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

997. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or

1 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 2 other Michigan Subclass members defective Affected Vehicles and by misrepresenting  
 3 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 4 defective design, including information known to Volkswagen rendering each  
 5 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 6 equipped with a CleanDiesel engine system.

7 998. As a direct and proximate result of Volkswagen's breach of contract,  
 8 Plaintiff and the Michigan Subclass have been damaged in an amount to be proven at  
 9 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 10 and consequential damages, and other damages allowed by law.

11 **Y. Claims Brought on Behalf of the Minnesota Subclass**

12 **COUNT I**  
 13 **VIOLATION OF MINNESOTA PREVENTION**  
 14 **OF CONSUMER FRAUD ACT**  
 15 **(MINN. STAT. § 325F.68, *et seq.*)**

16 999. Plaintiff William Mackey ("Plaintiff," for purposes of all Minnesota  
 17 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 18 set forth herein.

19 1000. This claim is brought only on behalf of the Minnesota Subclass.

20 1001. The Affected Vehicles constitute "merchandise" within the meaning of  
 21 MINN. STAT. § 325F.68(2).

22 1002. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA")  
 23 prohibits "[t]he act, use, or employment by any person of any fraud, false pretense,  
 24 false promise, misrepresentation, misleading statement or deceptive practice, with the  
 25 intent that others rely thereon in connection with the sale of any merchandise, whether  
 26 or not any person has in fact been misled, deceived, or damaged thereby . . ." MINN.  
 27 STAT. § 325F.69(1). Volkswagen participated in misleading, false, or deceptive acts  
 28 that violated the Minnesota CFA. By fraudulently installing the "defeat device" to  
 make it appear that its CleanDiesel engine systems complied with EPA regulations,

1 Volkswagen engaged in deceptive business practices prohibited by the Minnesota  
2 CFA.

3 1003. Volkswagen's actions as set forth above occurred in the conduct of trade  
4 or commerce.

5 1004. In the course of its business, Volkswagen installed the "defeat device"  
6 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
7 and otherwise engaged in activities with a tendency or capacity to deceive.

8 Volkswagen also engaged in unlawful trade practices by employing deception,  
9 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
10 omission of any material fact with intent that others rely upon such concealment,  
11 suppression or omission, in connection with the sale of Affected Vehicles.

12 1005. Volkswagen has known of its use of the "defeat device" and the true  
13 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
14 information until recently.

15 1006. Volkswagen was also aware that it valued profits over environmental  
16 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
17 distributing vehicles throughout the United States that did not comply with EPA  
18 regulations. Volkswagen concealed this information as well.

19 1007. By failing to disclose and by actively concealing the "defeat device" and  
20 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
21 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
22 by presenting itself as a reputable manufacturer that valued safety, environmental  
23 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
24 Volkswagen engaged in deceptive business practices in violation of the Minnesota  
25 CFA.

26 1008. In the course of Volkswagen's business, it willfully failed to disclose and  
27 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
28

1 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
 2 compounded the deception by repeatedly asserting that the Affected Vehicles were  
 3 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
 4 be a reputable manufacturer that valued safety, environmental cleanliness and  
 5 efficiency, and stood behind its vehicles once they were on the road.

6 1009. Volkswagen's unfair or deceptive acts or practices were likely to, and did  
 7 in fact, deceive reasonable consumers, including Plaintiff, about the true cleanliness  
 8 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 9 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 10 and the true value of the Affected Vehicles.

11 1010. Volkswagen intentionally and knowingly misrepresented material facts  
 12 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Minnesota  
 13 Subclass.

14 1011. Volkswagen knew or should have known that its conduct violated the  
 15 Minnesota CFA.

16 1012. As alleged above, Volkswagen made material statements about the safety,  
 17 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
 18 and Audi brands that were either false or misleading.

19 1013. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 20 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 21 cleanliness and integrity at Volkswagen, because Volkswagen:

- 22 a. Possessed exclusive knowledge that it valued profits  
 23 over environmental cleanliness, efficiency, and  
 24 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 25 b. Intentionally concealed the foregoing from Plaintiffs;  
 26 and/or
- 27 c. Made incomplete representations about the safety,  
 28 cleanliness, efficiency and reliability of the Affected  
 Vehicles generally, and the use of the "defeat device"  
 and true nature of the CleanDiesel engine system in

1 particular, while purposefully withholding material  
2 facts from Plaintiffs that contradicted these  
representations.

3 1014. Because Volkswagen fraudulently concealed the “defeat device” and the  
4 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
5 of negative publicity once the use of the “defeat device” and true characteristics of the  
6 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
7 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
8 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
9 would be.

10 1015. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
11 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
12 and the Minnesota Subclass. A vehicle made by a reputable manufacturer of  
13 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
14 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
15 the amount its cars pollutes rather than make environmentally friendly vehicles.

16 1016. Plaintiff and the Minnesota Subclass suffered ascertainable loss caused  
17 by Volkswagen’s misrepresentations and its concealment of and failure to disclose  
18 material information. Class members who purchased the Affected Vehicles either  
19 would have paid less for their vehicles or would not have purchased or leased them at  
20 all.

21 1017. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
22 to refrain from unfair and deceptive acts or practices under the Minnesota CFA. All  
23 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
24 value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and  
25 practices made in the course of Volkswagen’s business.

1018. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1019. As a direct and proximate result of Volkswagen's violations of the Minnesota CFA, Plaintiff and the Minnesota Subclass have suffered injury-in-fact and/or actual damage.

1020. Pursuant to MINN. STAT. § 8.31(3a), Plaintiff and the Minnesota Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

1021. Plaintiffs also seek punitive damages under MINN. STAT. § 549.20(1)(a) given the clear and convincing evidence that Volkswagen's acts show deliberate disregard for the rights or safety of others.

**COUNT II**  
**VIOLATION OF MINNESOTA UNIFORM**  
**DECEPTIVE TRADE PRACTICES ACT**  
**(MINN. STAT. § 325D.43-48, et seq.)**

1022. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1023. This claim is brought only on behalf of the Minnesota Subclass.

1024. The Minnesota Deceptive Trade Practices Act ("Minnesota DTPA") prohibits deceptive trade practices, which occur when a person "(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" and "(9) advertises goods or services with intent not to sell them as advertised." MINN. STAT. § 325D.44. In the course of the Volkswagen's business, it installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations and engaged in

1 deceptive practices by representing that Affected Vehicles have sponsorship, approval,  
2 characteristics, ingredients, uses, benefits, or quantities that they do not have;  
3 representing that Affected Vehicles are of a particular standard, quality, or grade, or  
4 that goods are of a particular style or model, if they are of another; and advertising  
5 Affected Vehicles with intent not to sell them as advertised. Volkswagen participated  
6 in misleading, false, or deceptive acts that violated the Minnesota DTPA. By  
7 fraudulently installing the “defeat device” to make it appear that its CleanDiesel  
8 engine systems complied with EPA regulations, Volkswagen engaged in deceptive  
9 business practices prohibited by the Minnesota DTPA.

10 1025. Volkswagen’s actions as set forth above occurred in the conduct of trade  
11 or commerce.

12 1026. In the course of its business, Volkswagen installed the “defeat device”  
13 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
14 and otherwise engaged in activities with a tendency or capacity to deceive.  
15 Volkswagen also engaged in unlawful trade practices by employing deception,  
16 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
17 omission of any material fact with intent that others rely upon such concealment,  
18 suppression or omission, in connection with the sale of Affected Vehicles.

19 1027. Volkswagen has known of its use of the “defeat device” and the true  
20 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
21 information until recently.

22 1028. Volkswagen was also aware that it valued profits over environmental  
23 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
24 distributing vehicles throughout the United States that did not comply with EPA  
25 regulations. Volkswagen concealed this information as well.

26 1029. By failing to disclose and by actively concealing the “defeat device” and  
27 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
28



1 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
2 by presenting itself as a reputable manufacturer that valued safety, environmental  
3 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
4 Volkswagen engaged in deceptive business practices in violation of the Minnesota  
5 DTPA.

6 1030. In the course of Volkswagen's business, it willfully failed to disclose and  
7 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
8 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
9 compounded the deception by repeatedly asserting that the Affected Vehicles were  
10 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
11 be a reputable manufacturer that valued safety, environmental cleanliness and  
12 efficiency, and stood behind its vehicles once they are on the road.

13 1031. Volkswagen's unfair or deceptive acts or practices were likely to and did  
14 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
15 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
16 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
17 value of the Affected Vehicles.

18 1032. Volkswagen intentionally and knowingly misrepresented material facts  
19 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Minnesota  
20 Subclass.

21 1033. Volkswagen knew or should have known that its conduct violated the  
22 Minnesota DTPA.

23 1034. As alleged above, Volkswagen made material statements about the safety,  
24 cleanliness, efficiency and reliability of the Affected Vehicles that were either false or  
25 misleading.  
26  
27  
28

1           1035. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
2 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
3 cleanliness and integrity at Volkswagen, because Volkswagen:

- 4           a.     Possessed exclusive knowledge that it valued profits  
5                 over environmental cleanliness, efficiency, and  
6                 lawfulness, and that it was manufacturing, selling and  
               distributing vehicles throughout the United States that  
               did not comply with EPA regulations;
- 7           b.     Intentionally concealed the foregoing from Plaintiffs;  
8                 and/or
- 9           c.     Made incomplete representations about the safety,  
10                cleanliness, efficiency and reliability of the Affected  
11                Vehicles generally, and the use of the “defeat device”  
              and true nature of the CleanDiesel engine system in  
              particular, while purposefully withholding material  
              facts from Plaintiffs that contradicted these  
              representations.

12           1036. Because Volkswagen fraudulently concealed the “defeat device” and the  
13 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
14 of negative publicity once the use of the “defeat device” and true characteristics of the  
15 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
16 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
17 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
18 would be.

19           1037. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
20 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
21 and the Minnesota Subclass. A vehicle made by a reputable manufacturer of safe  
22 vehicles is worth more than an otherwise comparable vehicle made by a disreputable  
23 and dishonest manufacturer of polluting vehicles that conceals the amount its cars  
24 pollutes rather than make environmentally friendly vehicles.

25           1038. Plaintiff and the Minnesota Subclass suffered ascertainable loss caused  
26 by Volkswagen’s misrepresentations and its failure to disclose material information.  
27 Had they been aware of the true characteristics of the CleanDiesel engine system, and  
28

1 the company's callous disregard for environmental laws and regulations, Plaintiffs  
2 either would have paid less for their vehicles or would not have purchased or leased  
3 them at all. Plaintiffs did not receive the benefit of their bargain as a result of  
4 Volkswagen's misconduct.

5 1039. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
6 to the general public. Volkswagen's unlawful acts and practices complained of herein  
7 affect the public interest.

8 1040. As a direct and proximate result of Volkswagen's violations of the  
9 Minnesota DTPA, Plaintiff and the Minnesota Subclass have suffered injury-in-fact  
10 and/or actual damage.

11 1041. Pursuant to MINN. STAT. § 8.31(3a) and 325D.45, Plaintiff and the  
12 Minnesota Subclass seek actual damages, attorneys' fees, and any other just and  
13 proper relief available under the Minnesota DTPA.

14 1042. Plaintiffs also seek punitive damages under MINN. STAT. § 549.20(1)(a)  
15 give the clear and convincing evidence that Volkswagen's acts show deliberate  
16 disregard for the rights or safety of others.

17 **COUNT III**  
18 **FRAUD BY CONCEALMENT**

19 1043. Plaintiffs reallege and incorporate by reference all paragraphs as though  
20 fully set forth herein.

21 1044. This claim is brought on behalf of the Minnesota Subclass.

22 1045. Volkswagen intentionally concealed and suppressed material facts  
23 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
24 notwithstanding references in the very model names of the subject vehicles as "Clean  
25 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
26 secret scheme to evade federal and state vehicle emissions standards by installing  
27 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
28 which contributes to the creation of ozone and smog. The software installed on the

1 vehicles at issue was designed nefariously to kick-in during emissions certification  
2 testing, such that the vehicles would show far lower emissions than when actually  
3 operating on the road. The result was what Volkswagen intended: vehicles passed  
4 emissions certifications by way of deliberately induced false readings. Reportedly,  
5 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
6 vehicles at up to 40 times applicable standards.

7 1046. Plaintiff and the Minnesota Subclass members reasonably relied upon  
8 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
9 representations were false and gravely misleading. As alleged herein, Volkswagen  
10 employed extremely sophisticated methods of deception. Plaintiff and the Minnesota  
11 Subclass members did not, and could not, unravel Volkswagen's deception on their  
12 own.

13 1047. Volkswagen concealed and suppressed material facts concerning what is  
14 evidently the true culture of Volkswagen—one characterized by an emphasis on  
15 profits and sales above compliance with federal and state clean air laws, and emissions  
16 regulations that are meant to protect the public and consumers. It also emphasized  
17 profits and sales over the trust that Plaintiff and the Minnesota Subclass members  
18 placed in its representations. As one customer, Priya Shah, put it in a quotation cited  
19 by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard  
20 and intentional manipulation of the system. That's just a whole other level of not only  
21 lying to the government, but also lying to your consumer. People buy diesel cars from  
22 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
23 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
24 want to be spewing noxious gases into the environment."

25 1048. Necessarily, Volkswagen also took steps to ensure that its employees did  
26 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
27 the Minnesota Subclass members. Volkswagen did so in order to boost the reputations  
28

1 of its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
2 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
3 with applicable law, including federal and state clean air laws and emissions  
4 regulations, and that its vehicles likewise comply with applicable law and regulations.  
5 Volkswagen's false representations were material to consumers, both because they  
6 concerned the quality of the Affected Vehicles, including their compliance with  
7 applicable federal and state laws and regulations regarding clean air and emissions,  
8 and also because the representations played a significant role in the value of the  
9 vehicles. As Volkswagen well knew, its customers, including Plaintiff and the  
10 Minnesota Subclass members, highly valued that the vehicles they were purchasing or  
11 leasing were *clean* diesel cars, and they paid accordingly.

12 1049. Volkswagen had a duty to disclose its emissions scheme because  
13 knowledge of the scheme and its details were known and/or accessible only to  
14 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
15 maintenance of its scheme, and because Volkswagen knew the facts were not known  
16 to or reasonably discoverable by Plaintiff or the Minnesota Subclass members.  
17 Volkswagen also had a duty to disclose because it made general affirmative  
18 representations about the qualities of its vehicles with respect to emissions standards,  
19 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
20 which were misleading, deceptive, and incomplete without the disclosure of the  
21 additional facts set forth above regarding its emissions scheme, the actual emissions of  
22 its vehicles, its actual philosophy with respect to compliance with federal and state  
23 clean air laws and emissions regulations, and its actual practices with respect to the  
24 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
25 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
26 These omitted and concealed facts were material because they directly impact the  
27 value of the Affected Vehicles purchased or leased by Plaintiff and the Minnesota  
28

1 Subclass members. Whether a manufacturer's products comply with federal and state  
2 clean air laws and emissions regulations, and whether that manufacturer tells the truth  
3 with respect to such compliance or non-compliance, are material concerns to a  
4 consumer, including with respect to the emissions certification testing their vehicles  
5 must pass. Volkswagen represented to Plaintiff and the Minnesota Subclass members  
6 that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
7 confirm this—except that, secretly, Volkswagen had subverted the testing process  
8 thoroughly.

9 1050. Volkswagen actively concealed and/or suppressed these material facts, in  
10 whole or in part, to pad and protect its profits and to avoid the perception that its  
11 vehicles did not or could not comply with federal and state laws governing clean air  
12 and emissions, which perception would hurt the brand's image and cost Volkswagen  
13 money, and it did so at the expense of Plaintiff and the Minnesota Subclass members.

14 1051. On information and belief, Volkswagen has still not made full and  
15 adequate disclosures, and continues to defraud Plaintiff and the Minnesota Subclass  
16 members by concealing material information regarding the emission qualities of its  
17 vehicles and its emissions scheme.

18 1052. Plaintiff and the Minnesota Subclass members were unaware of the  
19 omitted material facts referenced herein, and they would not have acted as they did if  
20 they had known of the concealed and/or suppressed facts, in that they would not have  
21 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
22 not have continued to drive their heavily polluting vehicles, or would have taken other  
23 affirmative steps in light of the information concealed from them. Plaintiff's and the  
24 Minnesota Subclass members' actions were justified. Volkswagen was in exclusive  
25 control of the material facts, and such facts were not known to the public, Plaintiff, or  
26 Minnesota Subclass members.

1           1053. Because of the concealment and/or suppression of the facts, Plaintiff and  
2 Minnesota Subclass members have sustained damage because they own vehicles that  
3 are diminished in value as a result of Volkswagen's concealment of the true quality  
4 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
5 the actual emission qualities and quantities of hundreds of thousands of Volkswagen-  
6 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
7 corporate policies. Had Plaintiff and the Minnesota Subclass members been aware of  
8 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
9 with applicable federal and state laws and regulations, Plaintiff and Minnesota  
10 Subclass members who purchased or leased new or previously owned vehicles would  
11 have paid less for their vehicles or would not have purchased or leased them at all.

12           1054. The value of Plaintiff's and Minnesota Subclass members' vehicles has  
13 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
14 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
15 to Plaintiff's and Minnesota Subclass members' vehicles and made any reasonable  
16 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
17 otherwise would have been fair market value for the vehicles. In addition, Class  
18 members are entitled to damages for loss of use, costs of additional fuel, costs of  
19 unused warranties, and other damages to be proved at trial.

20           1055. Accordingly, Volkswagen is liable to Plaintiff and Minnesota Subclass  
21 members for damages in an amount to be proven at trial.

22           1056. Volkswagen's acts were done wantonly, maliciously, oppressively,  
23 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
24 Minnesota Subclass members' rights and the representations that Volkswagen made to  
25 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
26 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
27  
28



1 sufficient to deter such conduct in the future, which amount is to be determined  
2 according to proof.

3 **COUNT IV**  
4 **BREACH OF CONTRACT**  
5 **(BASED ON MINNESOTA LAW)**

6 1057. Plaintiff incorporates by reference all preceding allegations as though  
7 fully set forth herein.

8 1058. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
9 owned vehicle purchasers in the Minnesota Subclass.

10 1059. Volkswagen's misrepresentations and omissions alleged herein, including  
11 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
12 defect and/or defective design as alleged herein, caused Plaintiff and the other  
13 Minnesota Subclass members to make their purchases or leases of their Affected  
14 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
15 Minnesota Subclass members would not have purchased or leased these Affected  
16 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
17 they paid, and/or would have purchased or leased less expensive alternative vehicles  
18 that did not contain the CleanDiesel engine system and which were not marketed as  
19 including such a system. Accordingly, Plaintiff and the other Minnesota Subclass  
20 members overpaid for their Affected Vehicles and did not receive the benefit of their  
21 bargain.

22 1060. Each and every sale or lease of an Affected Vehicle by an authorized  
23 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
24 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
25 other Minnesota Subclass members defective Affected Vehicles and by  
26 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
27 defect and/or defective design, including information known to Volkswagen rendering  
28

1 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
2 equipped with a CleanDiesel engine system.

3 1061. As a direct and proximate result of Volkswagen's breach of contract,  
4 Plaintiff and the Minnesota Subclass have been damaged in an amount to be proven at  
5 trial, which shall include, but is not limited to, all compensatory damages, incidental  
6 and consequential damages, and other damages allowed by law.

7 **Z. Claims Brought on Behalf of the Mississippi Subclass**

8 **COUNT I**  
9 **VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT**  
10 **(MISS. CODE. ANN. § 75-24-1, ET SEQ.)**

11 1062. Plaintiff Edward Simmons ("Plaintiff," for purposes of all Mississippi  
12 Subclass Counts) incorporates by reference all preceding allegations as though fully  
13 set forth herein.

14 1063. This claim is brought only on behalf of members of the Mississippi  
15 Subclass.

16 1064. The Mississippi Consumer Protection Act ("Mississippi CPA") prohibits  
17 "unfair or deceptive trade practices in or affecting commerce." MISS. CODE. ANN. §  
18 75-24-5(1). Unfair or deceptive practices include, but are not limited to, "(e)  
19 Representing that goods or services have sponsorship, approval, characteristics,  
20 ingredients, uses, benefits, or quantities that they do not have or that a person has a  
21 sponsorship, approval, status, affiliation, or connection that he does not have;" "(g)  
22 Representing that goods or services are of a particular standard, quality, or grade, or  
23 that goods are of a particular style or model, if they are of another;" and "(i)  
24 Advertising goods or services with intent not to sell them as advertised." Volkswagen  
25 participated in deceptive trade practices that violated the Mississippi CPA as described  
26 herein, including representing that Affected Vehicles have characteristics, uses,  
27 benefits, and qualities which they do not have; representing that Affected Vehicles are  
28

1 of a particular standard and quality when they are not; and advertising Affected  
2 Vehicles with the intent not to sell them as advertised.

3 1065. In the course of its business, Volkswagen installed the “defeat device”  
4 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
5 and otherwise engaged in activities with a tendency or capacity to deceive.

6 Volkswagen also engaged in unlawful trade practices by employing deception,  
7 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
8 omission of any material fact with intent that others rely upon such concealment,  
9 suppression or omission, in connection with the sale of Affected Vehicles.

10 1066. Volkswagen has known of its use of the “defeat device” and the true  
11 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
12 information until recently.

13 1067. Volkswagen was also aware that it valued profits over environmental  
14 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
15 distributing vehicles throughout the United States that did not comply with EPA  
16 regulations. Volkswagen concealed this information as well.

17 1068. By failing to disclose and by actively concealing the “defeat device” and  
18 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
19 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
20 by presenting itself as a reputable manufacturer that valued safety, environmental  
21 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
22 Volkswagen engaged in unfair and deceptive business practices in violation of the  
23 Mississippi CPA.

24 1069. In the course of Volkswagen’s business, it willfully failed to disclose and  
25 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
26 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
27 compounded the deception by repeatedly asserting that the Affected Vehicles were  
28

1 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
2 be a reputable manufacturer that valued safety, environmental cleanliness and  
3 efficiency, and stood behind its vehicles once they are on the road.

4 1070. Volkswagen's unfair or deceptive acts or practices were likely to and did  
5 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
6 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
7 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
8 value of the Affected Vehicles.

9 1071. Volkswagen intentionally and knowingly misrepresented material facts  
10 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Mississippi  
11 Subclass.

12 1072. Volkswagen knew or should have known that its conduct violated the  
13 Mississippi CPA.

14 1073. As alleged above, Volkswagen made material statements about the safety,  
15 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
16 and Audi brands that were either false or misleading.

17 1074. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
18 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
19 cleanliness and integrity at Volkswagen, because Volkswagen:

- 20 a. Possessed exclusive knowledge that it valued profits  
21 over environmental cleanliness, efficiency, and  
22 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 23 b. Intentionally concealed the foregoing from Plaintiffs;  
24 and/or
- 25 c. Made incomplete representations about the safety,  
26 cleanliness, efficiency and reliability of the Affected  
27 Vehicles generally, and the use of the "defeat device"  
and true nature of the CleanDiesel engine system in  
28 particular, while purposefully withholding material  
facts from Plaintiffs that contradicted these  
representations.

1           1075. Because Volkswagen fraudulently concealed the “defeat device” and the  
2 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
3 of negative publicity once the use of the “defeat device” and true characteristics of the  
4 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
5 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
6 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
7 would be.

8           1076. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
9 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
10 and the Mississippi Subclass. A vehicle made by a reputable manufacturer of  
11 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
12 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
13 the amount its cars pollutes rather than make environmentally friendly vehicles.

14           1077. Plaintiff and the Mississippi Subclass suffered ascertainable loss caused  
15 by Volkswagen’s misrepresentations and its concealment of and failure to disclose  
16 material information. Class members who purchased the Affected Vehicles either  
17 would have paid less for their vehicles or would not have purchased or leased them at  
18 all.

19           1078. All owners of Affected Vehicles suffered ascertainable loss in the form of  
20 the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair  
21 acts and practices made in the course of Volkswagen’s business. Class members who  
22 purchased Affected Vehicles either would have paid less for their vehicles or would  
23 not have purchased or leased them at all.

24           1079. Volkswagen’s violations present a continuing risk to Plaintiffs as well as  
25 to the general public. Volkswagen’s unlawful acts and practices complained of herein  
26 affect the public interest.  
27  
28

1           1080. As a direct and proximate result of Volkswagen's violations of the  
2 Mississippi CPA, Plaintiff and the Mississippi Subclass have suffered injury-in-fact  
3 and/or actual damage.

4           1081. Plaintiffs' actual damages in an amount to be determined at trial any other  
5 just and proper relief available under the Mississippi CPA.

6                                   **COUNT II**  
7                                   **FRAUD BY CONCEALMENT**

8           1082. Plaintiffs reallege and incorporate by reference all paragraphs as though  
9 fully set forth herein.

10          1083. This claim is brought on behalf of the Mississippi Subclass.

11          1084. Volkswagen intentionally concealed and suppressed material facts  
12 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
13 notwithstanding references in the very model names of the subject vehicles as "Clean  
14 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
15 secret scheme to evade federal and state vehicle emissions standards by installing  
16 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
17 which contributes to the creation of ozone and smog. The software installed on the  
18 vehicles at issue was designed nefariously to kick-in during emissions certification  
19 testing, such that the vehicles would show far lower emissions than when actually  
20 operating on the road. The result was what Volkswagen intended: vehicles passed  
21 emissions certifications by way of deliberately induced false readings. Reportedly,  
22 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
23 vehicles at up to 40 times applicable standards.

24          1085. Plaintiff and Mississippi Subclass members reasonably relied upon  
25 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
26 representations were false and gravely misleading. As alleged herein, Volkswagen  
27 employed extremely sophisticated methods of deception. Plaintiff and Mississippi  
28

1 Subclass members did not, and could not, unravel Volkswagen's deception on their  
2 own.

3 1086. Volkswagen concealed and suppressed material facts concerning what is  
4 evidently the true culture of Volkswagen—one characterized by an emphasis on  
5 profits and sales above compliance with federal and state clean air laws, and emissions  
6 regulations that are meant to protect the public and consumers. It also emphasized  
7 profits and sales over the trust that Plaintiff and Mississippi Subclass members placed  
8 in its representations. As one customer, Priya Shah, put it in a quotation cited by the  
9 *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
10 intentional manipulation of the system. That's just a whole other level of not only  
11 lying to the government, but also lying to your consumer. People buy diesel cars from  
12 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
13 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
14 want to be spewing noxious gases into the environment."

15 1087. Necessarily, Volkswagen also took steps to ensure that its employees did  
16 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
17 Mississippi Subclass members. Volkswagen did so in order to boost the reputations of  
18 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
19 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
20 with applicable law, including federal and state clean air laws and emissions  
21 regulations, and that its vehicles likewise comply with applicable law and regulations.  
22 Volkswagen's false representations were material to consumers, both because they  
23 concerned the quality of the Affected Vehicles, including their compliance with  
24 applicable federal and state laws and regulations regarding clean air and emissions,  
25 and also because the representations played a significant role in the value of the  
26 vehicles. As Volkswagen well knew, its customers, including Plaintiff and  
27  
28



1 Mississippi Subclass members, highly valued that the vehicles they were purchasing  
2 or leasing were *clean* diesel cars, and they paid accordingly.

3 1088. Volkswagen had a duty to disclose its emissions scheme because  
4 knowledge of the scheme and its details were known and/or accessible only to  
5 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
6 maintenance of its scheme, and because Volkswagen knew the facts were not known  
7 to or reasonably discoverable by Plaintiff or Mississippi Subclass members.  
8 Volkswagen also had a duty to disclose because it made general affirmative  
9 representations about the qualities of its vehicles with respect to emissions standards,  
10 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
11 which were misleading, deceptive, and incomplete without the disclosure of the  
12 additional facts set forth above regarding its emissions scheme, the actual emissions of  
13 its vehicles, its actual philosophy with respect to compliance with federal and state  
14 clean air laws and emissions regulations, and its actual practices with respect to the  
15 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
16 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
17 These omitted and concealed facts were material because they directly impact the  
18 value of the Affected Vehicles purchased or leased by Plaintiff and Mississippi  
19 Subclass members. Whether a manufacturer's products comply with federal and state  
20 clean air laws and emissions regulations, and whether that manufacturer tells the truth  
21 with respect to such compliance or non-compliance, are material concerns to a  
22 consumer, including with respect to the emissions certification testing their vehicles  
23 must pass. Volkswagen represented to Plaintiff and Mississippi Subclass members  
24 that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
25 confirm this—except that, secretly, Volkswagen had subverted the testing process  
26 thoroughly.

1           1089. Volkswagen actively concealed and/or suppressed these material facts, in  
2 whole or in part, to pad and protect its profits and to avoid the perception that its  
3 vehicles did not or could not comply with federal and state laws governing clean air  
4 and emissions, which perception would hurt the brand's image and cost Volkswagen  
5 money, and it did so at the expense of Plaintiff and Mississippi Subclass members.

6           1090. On information and belief, Volkswagen has still not made full and  
7 adequate disclosures, and continues to defraud Plaintiff and Mississippi Subclass  
8 members by concealing material information regarding the emissions qualities of its  
9 vehicles and its emissions scheme.

10           1091. Plaintiff and Mississippi Subclass members were unaware of the omitted  
11 material facts referenced herein, and they would not have acted as they did if they had  
12 known of the concealed and/or suppressed facts, in that they would not have  
13 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
14 not have continued to drive their heavily polluting vehicles, or would have taken other  
15 affirmative steps in light of the information concealed from them. Plaintiff's and  
16 Mississippi Subclass members' actions were justified. Volkswagen was in exclusive  
17 control of the material facts, and such facts were not known to the public, Plaintiff, or  
18 Mississippi Subclass members.

19           1092. Because of the concealment and/or suppression of the facts, Plaintiff and  
20 Mississippi Subclass members have sustained damage because they own vehicles that  
21 are diminished in value as a result of Volkswagen's concealment of the true quality  
22 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
23 the actual emissions qualities and quantities of hundreds of thousands of Volkswagen-  
24 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
25 corporate policies. Had Plaintiff and Mississippi Subclass members been aware of  
26 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
27 with applicable federal and state laws and regulations, Plaintiffs and Class members  
28

1 who purchased or leased new or previously owned vehicles would have paid less for  
2 their vehicles or would not have purchased or leased them at all.

3 1093. The value of Plaintiff's and Mississippi Subclass members' vehicles has  
4 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
5 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
6 to Plaintiff's and Mississippi Subclass members' vehicles and made any reasonable  
7 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
8 otherwise would have been fair market value for the vehicles. In addition, Class  
9 members are entitled to damages for loss of use, costs of additional fuel, costs of  
10 unused warranties, and other damages to be proved at trial.

11 1094. Accordingly, Volkswagen is liable to Plaintiff and Mississippi Subclass  
12 members for damages in an amount to be proven at trial.

13 1095. Volkswagen's acts were done wantonly, maliciously, oppressively,  
14 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
15 Mississippi Subclass members' rights and the representations that Volkswagen made  
16 to them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
17 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
18 sufficient to deter such conduct in the future, which amount is to be determined  
19 according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON MISSISSIPPI LAW)**

22 1096. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 1097. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the Mississippi Subclass.

26 1098. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28

1 defect and/or defective design as alleged herein, caused Plaintiff and the other  
2 Mississippi Subclass members to make their purchases or leases of their Affected  
3 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
4 Mississippi Subclass members would not have purchased or leased these Affected  
5 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
6 they paid, and/or would have purchased or leased less expensive alternative vehicles  
7 that did not contain the CleanDiesel engine system and which were not marketed as  
8 including such a system. Accordingly, Plaintiff and the other Mississippi Subclass  
9 members overpaid for their Affected Vehicles and did not receive the benefit of their  
10 bargain.

11 1099. Each and every sale or lease of an Affected Vehicle by an authorized  
12 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
13 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
14 other Mississippi Subclass members defective Affected Vehicles and by  
15 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
16 defect and/or defective design, including information known to Volkswagen rendering  
17 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
18 equipped with a CleanDiesel engine system.

19 1100. As a direct and proximate result of Volkswagen's breach of contract,  
20 Plaintiff and the Mississippi Subclass have been damaged in an amount to be proven  
21 at trial, which shall include, but is not limited to, all compensatory damages, incidental  
22 and consequential damages, and other damages allowed by law.  
23  
24  
25  
26  
27  
28

**AA. Claims Brought on Behalf of the Missouri Subclass**

**COUNT I  
VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT  
(MO. REV. STAT. § 407.010, *et seq.*)**

1101. Plaintiff Charles Hall (“Plaintiff,” for purposes of all Missouri Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1102. This claim is brought only on behalf of the Missouri Subclass.

1103. Volkswagen, Plaintiffs and the Missouri Subclass are “persons” within the meaning of MO. REV. STAT. § 407.010(5).

1104. Volkswagen engaged in “trade” or “commerce” in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

1105. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise.” MO. REV. STAT. § 407.020.

1106. In the course of its business, Volkswagen environmental laws and regulations and, omitted, suppressed, and concealed its use of the “defeat device” as described herein. By failing to disclose these defects or facts about the defects described herein known to it or that were available to Volkswagen upon reasonable inquiry, Volkswagen deprived consumers of all material facts about the safety and functionality of their vehicle. By failing to release material facts about the defect, Volkswagen curtailed or reduced the ability of consumers to take notice of material facts about their vehicle, and/or it affirmatively operated to hide or keep those facts from consumers. 15 MO. CODE OF SERV. REG. § 60-9.110. Moreover, Volkswagen has otherwise engaged in activities with a tendency or capacity to deceive.

Volkswagen also engaged in unlawful trade practices by employing deception,

1 deceptive acts or practices, fraud, misrepresentations, unfair practices, and/or  
2 concealment, suppression or omission of any material fact with intent that others rely  
3 upon such concealment, suppression or omission, in connection with the sale of  
4 Affected Vehicles.

5 1107. Volkswagen has known of its use of the “defeat device” and the true  
6 characteristics of its CleanDiesel engine system, but suppressed and/or concealed all  
7 of that information until recently.

8 1108. Volkswagen was also aware that it valued profits over environmental  
9 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
10 distributing vehicles throughout the United States that did not comply with EPA  
11 regulations. Volkswagen omitted, suppressed, and/or concealed this information as  
12 well.

13 1109. By failing to disclose and by actively concealing, suppressing, or omitting  
14 the “defeat device” and the true cleanliness and performance of the CleanDiesel  
15 engine system, by marketing its vehicles as safe, reliable, environmentally clean,  
16 efficient, and of high quality, and by presenting itself as a reputable manufacturer that  
17 valued safety, environmental cleanliness and efficiency, and stood behind its vehicles  
18 after they were sold, Volkswagen engaged in unfair and/or deceptive business  
19 practices and concealed, suppressed, and/or omitted material facts from consumers in  
20 connection with the purchase of their vehicles – all in violation of the Missouri MPA.

21 1110. In the course of Volkswagen’s business, it willfully failed to disclose and  
22 actively concealed, suppressed, and omitted the use of the “defeat device” and true  
23 cleanliness and efficiency of the CleanDiesel engine system and serious defects  
24 discussed above. Volkswagen compounded the deception by repeatedly asserting that  
25 the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high  
26 quality, and by claiming to be a reputable manufacturer that valued safety,  
27  
28

1 environmental cleanliness and efficiency, and stood behind its vehicles once they are  
2 on the road.

3 1111. Volkswagen's unfair or deceptive acts or practices, including these  
4 concealments, omissions, and suppressions of material facts, had a tendency or  
5 capacity to mislead, tended to create a false impression in consumers, and did in fact  
6 deceive reasonable consumers, including Plaintiff, about the true cleanliness and  
7 efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi  
8 brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and  
9 the true value of the Affected Vehicles.

10 1112. Volkswagen intentionally and knowingly misrepresented material facts  
11 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Missouri  
12 Subclass, including without limitation by failing to disclose the "defeat device" in  
13 light of circumstances under which the omitted facts were necessary in order to correct  
14 the assumptions, inferences or representations being made by Volkswagen about the  
15 safety, efficiency, cleanliness or reliability of its vehicles. Consequently, the failure to  
16 disclose such facts amounts to misleading statements pursuant to 15 MO. CODE OF  
17 SERV. REG. § 60-9.090.

18 1113. Because Volkswagen knew or believed that its statements regarding  
19 cleanliness, efficiency and reliability of its vehicles were not in accord with the facts  
20 and/or had no reasonable basis for such statements in light of its knowledge of these  
21 defects, Volkswagen engaged in fraudulent misrepresentations pursuant to 15 MO.  
22 CODE OF SERV. REG. 60-9.100.

23 1114. Volkswagen's conduct as described herein is unethical, oppressive, or  
24 unscrupulous and/or it presented a risk of substantial injury to consumers whose  
25 vehicles were operating illegally and under circumstances that rendered them unsafe.  
26 Such acts are unfair practices in violation of  
27 15 MO. CODE OF SERV. REG. 60-8.020.  
28



1 1115. Volkswagen knew or should have known that its conduct violated the  
2 Missouri MPA.

3 1116. As alleged above, Volkswagen made material statements about the safety,  
4 cleanliness, efficiency and reliability of the Affected Vehicles that were either false,  
5 misleading, and/or half-truths in violation of the Missouri MPA.

6 1117. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
7 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
8 cleanliness and integrity at Volkswagen, because Volkswagen:

- 9 a. Possessed exclusive knowledge that it valued profits  
10 over environmental cleanliness, efficiency, and  
11 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 12 b. Intentionally concealed the foregoing from Plaintiffs;  
13 and/or
- 14 c. Made incomplete representations about the safety,  
15 cleanliness, efficiency and reliability of the Affected  
16 Vehicles generally, and the use of the “defeat device”  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
17 facts from Plaintiffs that contradicted these  
representations.

18 1118. Because Volkswagen fraudulently concealed the “defeat device” and the  
19 true cleanliness and performance of the CleanDiesel engine system, and committed  
20 these other unlawful acts in violation of the Missouri MPA, resulting in a raft of  
21 negative publicity once the use of the “defeat device” and true characteristics of the  
22 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
23 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
24 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
25 would be.

26 1119. Volkswagen’s misleading statements, deception, and/or concealment,  
27 suppression, or omission of the “defeat device” and true nature of the CleanDiesel  
28 engine system were material to Plaintiffs and the Missouri Subclass. A vehicle made

1 by a reputable manufacturer of environmentally friendly vehicles is worth more than  
2 an otherwise comparable vehicle made by a disreputable and dishonest manufacturer  
3 of polluting vehicles that conceals the amount its cars pollutes rather than make  
4 environmentally friendly vehicles.

5 1120. Plaintiffs and the Missouri Subclass suffered ascertainable loss caused by  
6 Volkswagen's misrepresentations and its concealment of and failure to disclose  
7 material information. Class members who purchased Affected Vehicles either would  
8 have paid less for their vehicles or would not have purchased or leased them at all.

9 1121. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
10 to refrain from unfair and deceptive acts or practices under the Missouri MPA. All  
11 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
12 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
13 practices made in the course of Volkswagen's business.

14 1122. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
15 to the general public. Volkswagen's unlawful acts and practices complained of herein  
16 affect the public interest.

17 1123. As a direct and proximate result of Volkswagen's violations of the  
18 Missouri MPA, Plaintiffs and the Missouri Subclass have suffered injury-in-fact  
19 and/or actual damage.

20 1124. Volkswagen is liable to Plaintiffs and the Missouri Subclass for damages  
21 in amounts to be proven at trial, including attorneys' fees, costs, and punitive  
22 damages, as well as injunctive relief enjoining Volkswagen's unfair and deceptive  
23 practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

24 **COUNT II**  
25 **FRAUD BY CONCEALMENT**

26 1125. Plaintiffs reallege and incorporate by reference all paragraphs as though  
27 fully set forth herein.

28 1126. This claim is brought on behalf of the Missouri Subclass.

1           1127. Volkswagen intentionally concealed and suppressed material facts  
2 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
3 notwithstanding references in the very model names of the subject vehicles as “Clean  
4 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
5 secret scheme to evade federal and state vehicle emissions standards by installing  
6 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
7 which contributes to the creation of ozone and smog. The software installed on the  
8 vehicles at issue was nefariously designed to kick-in during emissions certification  
9 testing, such that the vehicles would show far lower emissions than when actually  
10 operating on the road. The result was what Volkswagen intended: vehicles passed  
11 emissions certifications by way of deliberately induced false readings. Reportedly,  
12 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
13 vehicles at up to 40 times applicable standards.

14           1128. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
15 representations. They had no way of knowing that Volkswagen’s representations were  
16 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
17 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
18 not, unravel Volkswagen’s deception on their own.

19           1129. Volkswagen concealed and suppressed material facts concerning what is  
20 evidently the true culture of Volkswagen—one characterized by an emphasis on  
21 profits and sales above compliance with federal and state clean air laws, and emissions  
22 regulations that are meant to protect the public and consumers. It also emphasized  
23 profits and sales over the trust that Plaintiffs and Class members placed in its  
24 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
25 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
26 intentional manipulation of the system. That’s just a whole other level of not only  
27 lying to the government, but also lying to your consumer. People buy diesel cars from  
28

1 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
2 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
3 want to be spewing noxious gases into the environment.”

4 1130. Necessarily, Volkswagen also took steps to ensure that its employees did  
5 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
6 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
7 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
8 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
9 law, including federal and state clean air laws and emissions regulations, and that its  
10 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
11 representations were material to consumers, both because they concerned the quality  
12 of the Affected Vehicles, including their compliance with applicable federal and state  
13 laws and regulations regarding clean air and emissions, and also because the  
14 representations played a significant role in the value of the vehicles. As Volkswagen  
15 well knew, its customers, including Plaintiffs and Class members, highly valued that  
16 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
17 accordingly.

18 1131. Volkswagen had a duty to disclose its emissions scheme because  
19 knowledge of the scheme and its details were known and/or accessible only to  
20 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
21 maintenance of its scheme, and because Volkswagen knew the facts were not known  
22 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
23 duty to disclose because it made general affirmative representations about the qualities  
24 of its vehicles with respect to emissions standards, starting with references to them as  
25 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
26 and incomplete without the disclosure of the additional facts set forth above regarding  
27 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
28

1 respect to compliance with federal and state clean air laws and emissions regulations,  
2 and its actual practices with respect to the vehicles at issue. Having volunteered to  
3 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
4 partial truth, but the entire truth. These omitted and concealed facts were material  
5 because they directly impact the value of the Affected Vehicles purchased or leased by  
6 Plaintiffs and Class members. Whether a manufacturer's products comply with  
7 federal and state clean air laws and emissions regulations, and whether that  
8 manufacturer tells the truth with respect to such compliance or non-compliance, are  
9 material concerns to a consumer, including with respect to the emissions certification  
10 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
11 members that they were purchasing *clean* diesel vehicles, and certification testing  
12 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
13 process thoroughly.

14 1132. Volkswagen actively concealed and/or suppressed these material facts, in  
15 whole or in part, to pad and protect its profits and to avoid the perception that its  
16 vehicles did not or could not comply with federal and state laws governing clean air  
17 and emissions, which perception would hurt the brand's image and cost Volkswagen  
18 money, and it did so at the expense of Plaintiffs and Class members.

19 1133. On information and belief, Volkswagen has still not made full and  
20 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
21 concealing material information regarding the emission qualities of its vehicles and its  
22 emissions scheme.

23 1134. Plaintiffs and Class members were unaware of the omitted material facts  
24 referenced herein, and they would not have acted as they did if they had known of the  
25 concealed and/or suppressed facts, in that they would not have purchased purportedly  
26 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
27 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
28

1 light of the information concealed from them. Plaintiffs' and Class Members' actions  
2 were justified. Volkswagen was in exclusive control of the material facts, and such  
3 facts were not known to the public, Plaintiffs, or Class members.

4 1135. Because of the concealment and/or suppression of the facts, Plaintiffs and  
5 Class members have sustained damage because they own vehicles that are diminished  
6 in value as a result of Volkswagen's concealment of the true quality and quantity of  
7 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
8 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
9 branded vehicles and the serious issues engendered by Volkswagen's corporate  
10 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
11 scheme, and the company's callous disregard for compliance with applicable federal  
12 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
13 new or previously owned vehicles would have paid less for their vehicles or would not  
14 have purchased or leased them at all.

15 1136. The value of Plaintiffs' and Class members' vehicles has diminished as a  
16 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
17 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
18 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
19 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
20 value for the vehicles. In addition, Class members are entitled to damages for loss of  
21 use, costs of additional fuel, costs of unused warranties, and other damages to be  
22 proved at trial.

23 1137. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
24 damages in an amount to be proven at trial.

25 1138. Volkswagen's acts were done wantonly, maliciously, oppressively,  
26 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
27 members' rights and the representations that Volkswagen made to them, in order to  
28

1 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
 2 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
 3 such conduct in the future, which amount is to be determined according to proof.

4 **COUNT III**  
 5 **BREACH OF CONTRACT**  
 6 **(BASED ON MISSOURI LAW)**

7 1139. Plaintiff incorporates by reference all preceding allegations as though  
 8 fully set forth herein.

9 1140. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
 10 owned vehicle purchasers in the Missouri Subclass.

11 1141. Volkswagen's misrepresentations and omissions alleged herein, including  
 12 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
 13 defect and/or defective design as alleged herein, caused Plaintiff and the other  
 14 Missouri Subclass members to make their purchases or leases of their Affected  
 15 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
 16 Missouri Subclass members would not have purchased or leased these Affected  
 17 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
 18 they paid, and/or would have purchased or leased less expensive alternative vehicles  
 19 that did not contain the CleanDiesel engine system and which were not marketed as  
 20 including such a system. Accordingly, Plaintiff and the other Missouri Subclass  
 21 members overpaid for their Affected Vehicles and did not receive the benefit of their  
 22 bargain.

23 1142. Each and every sale or lease of an Affected Vehicle by an authorized  
 24 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 25 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 26 other Missouri Subclass members defective Affected Vehicles and by misrepresenting  
 27 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 28 defective design, including information known to Volkswagen rendering each



1 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
2 equipped with a CleanDiesel engine system.

3 1143. As a direct and proximate result of Volkswagen's breach of contract,  
4 Plaintiff and the Missouri Subclass have been damaged in an amount to be proven at  
5 trial, which shall include, but is not limited to, all compensatory damages, incidental  
6 and consequential damages, and other damages allowed by law.

7 **BB. Claims Brought on Behalf of the Montana Subclass**

8 **COUNT I**  
9 **VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND**  
10 **CONSUMER PROTECTION ACT OF 1973**  
11 **(MONT. CODE ANN. § 30-14-101, *ET SEQ.*)**

12 1144. Plaintiff Kotab Holdings LLC ("Plaintiff," for purposes of all Montana  
13 Subclass Counts) incorporates by reference all preceding allegations as though fully  
14 set forth herein.

15 1145. This claim is brought only on behalf of the Montana Subclass.

16 1146. Volkswagen, Plaintiff and the Montana Subclass are "persons" within the  
17 meaning of MONT. CODE ANN. § 30-14-102(6).

18 1147. Montana Subclass Members are "consumer[s]" under MONT. CODE ANN.  
19 § 30-14-102(1).

20 1148. The sale or lease of the Affected Vehicles to Montana Subclass Members  
21 occurred within "trade and commerce" within the meaning of MONT. CODE ANN. § 30-  
22 14-102(8), and Volkswagen committed deceptive and unfair acts in the conduct of  
23 "trade and commerce" as defined in that statutory section.

24 1149. The Montana Unfair Trade Practices and Consumer Protection Act  
25 ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or  
26 deceptive acts or practices in the conduct of any trade or commerce." MONT. CODE  
27 ANN. § 30-14-103. By fraudulently installing the "defeat device" to make it appear  
28 that its CleanDiesel engine systems complied with EPA regulations, Volkswagen  
engaged in unfair and deceptive acts or practices in violation of the Montana CPA.

1           1150. In the course of its business, Volkswagen installed the “defeat device”  
2 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
3 and otherwise engaged in activities with a tendency or capacity to deceive.

4 Volkswagen also engaged in unlawful trade practices by employing deception,  
5 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
6 omission of any material fact with intent that others rely upon such concealment,  
7 suppression or omission, in connection with the sale of Affected Vehicles.

8           1151. Volkswagen has known of its use of the “defeat device” and the true  
9 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
10 information until recently.

11           1152. Volkswagen was also aware that it valued profits over environmental  
12 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
13 distributing vehicles throughout the United States that did not comply with EPA  
14 regulations. Volkswagen concealed this information as well.

15           1153. By failing to disclose and by actively concealing the “defeat device” and  
16 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
17 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
18 by presenting itself as a reputable manufacturer that valued safety, environmental  
19 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
20 Volkswagen engaged in unfair and deceptive business practices in violation of the  
21 Montana CPA.

22           1154. In the course of Volkswagen’s business, it willfully failed to disclose and  
23 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
24 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
25 compounded the deception by repeatedly asserting that the Affected Vehicles were  
26 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
27  
28

1 be a reputable manufacturer that valued safety, environmental cleanliness and  
 2 efficiency, and stood behind its vehicles once they are on the road.

3 1155. Volkswagen's unfair or deceptive acts or practices were likely to and did  
 4 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
 5 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 6 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 7 and the true value of the Affected Vehicles.

8 1156. Volkswagen intentionally and knowingly misrepresented material facts  
 9 regarding the Affected Vehicles and the Volkswagen and Audi brands with an intent  
 10 to mislead Plaintiff and the Montana Subclass.

11 1157. Volkswagen knew or should have known that its conduct violated the  
 12 Montana CPA.

13 1158. As alleged above, Volkswagen made material statements about the safety,  
 14 cleanliness, efficiency and reliability of the Affected Vehicles that were either false or  
 15 misleading.

16 1159. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 17 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 18 cleanliness and integrity at Volkswagen, because Volkswagen:

- 19 a. Possessed exclusive knowledge that it valued profits  
 20 over environmental cleanliness, efficiency, and  
 21 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 22 b. Intentionally concealed the foregoing from Plaintiffs;  
 23 and/or
- 24 c. Made incomplete representations about the safety,  
 25 cleanliness, efficiency and reliability of the Affected  
 26 Vehicles generally, and the use of the "defeat device"  
 and true nature of the CleanDiesel engine system in  
 27 particular, while purposefully withholding material  
 28 facts from Plaintiffs that contradicted these  
 representations.

1           1160. Because Volkswagen fraudulently concealed the “defeat device” and the  
2 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
3 of negative publicity once the use of the “defeat device” and true characteristics of the  
4 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
5 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
6 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
7 would be.

8           1161. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
9 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
10 and the Montana Subclass. A vehicle made by a reputable manufacturer of  
11 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
12 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
13 the amount its cars pollutes rather than make environmentally friendly vehicles.

14           1162. Plaintiff and the Montana Subclass suffered ascertainable loss caused by  
15 Volkswagen’s misrepresentations and its concealment of and failure to disclose  
16 material information. Class members who purchased Affected Vehicles either would  
17 have paid less for their vehicles or would not have purchased or leased them at all.

18           1163. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
19 to refrain from unfair and deceptive acts or practices under the Montana CPA. All  
20 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
21 value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and  
22 practices made in the course of Volkswagen’s business.

23           1164. Volkswagen’s violations present a continuing risk to Plaintiffs as well as  
24 to the general public. Volkswagen’s unlawful acts and practices complained of herein  
25 affect the public interest.  
26  
27  
28

1           1165. As a direct and proximate result of Volkswagen's violations of the  
2 Montana CPA, Plaintiffs and the Montana Subclass have suffered injury-in-fact and/or  
3 actual damage.

4           1166. Because the Volkswagen's unlawful methods, acts, and practices have  
5 caused Montana Subclass Members to suffer an ascertainable loss of money and  
6 property, the Montana Subclass seeks from Volkswagen actual damages or \$500,  
7 whichever is greater, discretionary treble damages, reasonable attorneys' fees, an order  
8 enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, and any other  
9 relief the Court considers necessary or proper, under MONT. CODE ANN. § 30-14-133.

10                                   **COUNT II**  
11                                   **FRAUD BY CONCEALMENT**

12           1167. Plaintiffs reallege and incorporate by reference all paragraphs as though  
13 fully set forth herein.

14           1168. This claim is brought on behalf of the Montana Subclass.

15           1169. Volkswagen intentionally concealed and suppressed material facts  
16 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
17 notwithstanding references in the very model names of the subject vehicles as "Clean  
18 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
19 secret scheme to evade federal and state vehicle emissions standards by installing  
20 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
21 which contributes to the creation of ozone and smog. The software installed on the  
22 vehicles at issue was designed nefariously to kick-in during emissions certification  
23 testing, such that the vehicles would show far lower emissions than when actually  
24 operating on the road. The result was what Volkswagen intended: vehicles passed  
25 emissions certifications by way of deliberately induced false readings. Reportedly,  
26 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
27 vehicles at up to 40 times applicable standards.  
28

1           1170. Plaintiff and Montana Subclass members reasonably relied upon  
2 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
3 representations were false and gravely misleading. As alleged herein, Volkswagen  
4 employed extremely sophisticated methods of deception. Plaintiff and Montana  
5 Subclass members did not, and could not, unravel Volkswagen's deception on their  
6 own.

7           1171. Volkswagen concealed and suppressed material facts concerning what is  
8 evidently the true culture of Volkswagen—one characterized by an emphasis on  
9 profits and sales above compliance with federal and state clean air laws, and emissions  
10 regulations that are meant to protect the public and consumers. It also emphasized  
11 profits and sales over the trust that Plaintiff and Montana Subclass members placed in  
12 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
13 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
14 intentional manipulation of the system. That's just a whole other level of not only  
15 lying to the government, but also lying to your consumer. People buy diesel cars from  
16 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
17 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
18 want to be spewing noxious gases into the environment."

19           1172. Necessarily, Volkswagen also took steps to ensure that its employees did  
20 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
21 Montana Subclass members. Volkswagen did so in order to boost the reputations of  
22 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
23 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
24 with applicable law, including federal and state clean air laws and emissions  
25 regulations, and that its vehicles likewise comply with applicable law and regulations.  
26 Volkswagen's false representations were material to consumers, both because they  
27 concerned the quality of the Affected Vehicles, including their compliance with  
28

1 applicable federal and state laws and regulations regarding clean air and emissions,  
2 and also because the representations played a significant role in the value of the  
3 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Montana  
4 Subclass members, highly valued that the vehicles they were purchasing or leasing  
5 were *clean* diesel cars, and they paid accordingly.

6 1173. Volkswagen had a duty to disclose its emissions scheme because  
7 knowledge of the scheme and its details were known and/or accessible only to  
8 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
9 maintenance of its scheme, and because Volkswagen knew the facts were not known  
10 to or reasonably discoverable by Plaintiff or Montana Subclass members.  
11 Volkswagen also had a duty to disclose because it made general affirmative  
12 representations about the qualities of its vehicles with respect to emissions standards,  
13 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
14 which were misleading, deceptive, and incomplete without the disclosure of the  
15 additional facts set forth above regarding its emissions scheme, the actual emissions of  
16 its vehicles, its actual philosophy with respect to compliance with federal and state  
17 clean air laws and emissions regulations, and its actual practices with respect to the  
18 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
19 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
20 These omitted and concealed facts were material because they directly impact the  
21 value of the Affected Vehicles purchased or leased by Plaintiff and Montana Subclass  
22 members. Whether a manufacturer's products comply with federal and state clean air  
23 laws and emissions regulations, and whether that manufacturer tells the truth with  
24 respect to such compliance or non-compliance, are material concerns to a consumer,  
25 including with respect to the emissions certification testing their vehicles must pass.  
26 Volkswagen represented to Plaintiff and Montana Subclass members that they were  
27  
28



1 purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—  
2 except that, secretly, Volkswagen had subverted the testing process thoroughly.

3 1174. Volkswagen actively concealed and/or suppressed these material facts, in  
4 whole or in part, to pad and protect its profits and to avoid the perception that its  
5 vehicles did not or could not comply with federal and state laws governing clean air  
6 and emissions, which perception would hurt the brand's image and cost Volkswagen  
7 money, and it did so at the expense of Plaintiff and Montana Subclass members.

8 1175. On information and belief, Volkswagen has still not made full and  
9 adequate disclosures, and continues to defraud Plaintiff and Montana Subclass  
10 members by concealing material information regarding the emissions qualities of its  
11 vehicles and its emissions scheme.

12 1176. Plaintiff and Montana Subclass members were unaware of the omitted  
13 material facts referenced herein, and they would not have acted as they did if they had  
14 known of the concealed and/or suppressed facts, in that they would not have  
15 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
16 not have continued to drive their heavily polluting vehicles, or would have taken other  
17 affirmative steps in light of the information concealed from them. Plaintiff's and  
18 Montana Subclass Members' actions were justified. Volkswagen was in exclusive  
19 control of the material facts, and such facts were not known to the public, Plaintiff, or  
20 Montana Subclass members.

21 1177. Because of the concealment and/or suppression of the facts, Plaintiff and  
22 Montana Subclass members have sustained damage because they own vehicles that are  
23 diminished in value as a result of Volkswagen's concealment of the true quality and  
24 quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the  
25 actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and  
26 Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate  
27 policies. Had Plaintiff and Montana Subclass members been aware of Volkswagen's  
28

1 emissions scheme, and the company's callous disregard for compliance with  
2 applicable federal and state laws and regulations, Plaintiff and Montana Subclass  
3 members who purchased or leased new or previously owned vehicles would have paid  
4 less for their vehicles or would not have purchased or leased them at all.

5 1178. The value of Plaintiff's and Montana Subclass Members' vehicles has  
6 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
7 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
8 to Plaintiff's and Montana Subclass members' vehicles and made any reasonable  
9 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
10 otherwise would have been fair market value for the vehicles. In addition, Class  
11 members are entitled to damages for loss of use, costs of additional fuel, costs of  
12 unused warranties, and other damages to be proved at trial.

13 1179. Accordingly, Volkswagen is liable to Plaintiff and Montana Subclass  
14 members for damages in an amount to be proven at trial.

15 1180. Volkswagen's acts were done wantonly, maliciously, oppressively,  
16 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
17 Montana Subclass members' rights and the representations that Volkswagen made to  
18 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
19 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
20 sufficient to deter such conduct in the future, which amount is to be determined  
21 according to proof.

22 **COUNT III**  
23 **BREACH OF CONTRACT**  
**(BASED ON MONTANA LAW)**

24 1181. Plaintiff incorporates by reference all preceding allegations as though  
25 fully set forth herein.

26 1182. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
27 owned vehicle purchasers in the Montana Subclass.  
28

1           1183. Volkswagen's misrepresentations and omissions alleged herein, including  
2 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
3 defect and/or defective design as alleged herein, caused Plaintiff and the other  
4 Montana Subclass members to make their purchases or leases of their Affected  
5 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
6 Montana Subclass members would not have purchased or leased these Affected  
7 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
8 they paid, and/or would have purchased or leased less expensive alternative vehicles  
9 that did not contain the CleanDiesel engine system and which were not marketed as  
10 including such a system. Accordingly, Plaintiff and the other Montana Subclass  
11 members overpaid for their Affected Vehicles and did not receive the benefit of their  
12 bargain.

13           1184. Each and every sale or lease of an Affected Vehicle by an authorized  
14 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
15 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
16 other Montana Subclass members defective Affected Vehicles and by misrepresenting  
17 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
18 defective design, including information known to Volkswagen rendering each  
19 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
20 equipped with a CleanDiesel engine system.

21           1185. As a direct and proximate result of Volkswagen's breach of contract,  
22 Plaintiff and the Montana Subclass have been damaged in an amount to be proven at  
23 trial, which shall include, but is not limited to, all compensatory damages, incidental  
24 and consequential damages, and other damages allowed by law.  
25  
26  
27  
28

**CC. Claims Brought on Behalf of the Nebraska Subclass**

**COUNT I  
VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT  
(NEB. REV. STAT. § 59-1601, *ET SEQ.*)**

1186. Plaintiff Alan Branting (“Plaintiff,” for purposes of all Nebraska Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1187. This claim is brought only on behalf of the Nebraska Subclass.

1188. Volkswagen, Plaintiffs and Nebraska Class Members are “person[s]” under the Nebraska Consumer Protection Act (“Nebraska CPA”), NEB. REV. STAT. § 59-1601(1).

1189. Volkswagen’s actions as set forth herein occurred in the conduct of trade or commerce as defined under NEB. REV. STAT. § 59-1601(2).

1190. The Nebraska CPA prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” NEB. REV. STAT. § 59-1602. The conduct Volkswagen as set forth herein constitutes unfair or deceptive acts or practices.

1191. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive.

Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1192. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1193. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and

1 distributing vehicles throughout the United States that did not comply with EPA  
2 regulations. Volkswagen concealed this information as well.

3 1194. By failing to disclose and by actively concealing the “defeat device” and  
4 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
5 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
6 by presenting itself as a reputable manufacturer that valued safety, environmental  
7 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
8 Volkswagen engaged in unfair and deceptive business practices in violation of the  
9 Nebraska CPA.

10 1195. In the course of Volkswagen’s business, it willfully failed to disclose and  
11 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
12 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
13 compounded the deception by repeatedly asserting that the Affected Vehicles were  
14 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
15 be a reputable manufacturer that valued safety, environmental cleanliness and  
16 efficiency, and stood behind its vehicles once they are on the road.

17 1196. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
18 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
19 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
20 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
21 and the true value of the Affected Vehicles.

22 1197. Volkswagen intentionally and knowingly misrepresented material facts  
23 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Nebraska  
24 Class.

25 1198. Volkswagen knew or should have known that its conduct violated the  
26 Nebraska CPA.

1199. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1200. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1201. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1202. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Nebraska Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1           1203. Plaintiff and the Nebraska Subclass suffered ascertainable loss caused by  
2 Volkswagen's misrepresentations and its concealment of and failure to disclose  
3 material information. Class members who purchased Affected Vehicles either would  
4 have paid less for their vehicles or would not have purchased or leased them at all.

5           1204. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
6 to refrain from unfair and deceptive acts or practices under the Nebraska CPA. All  
7 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
8 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
9 practices made in the course of Volkswagen's business.

10           1205. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
11 to the general public. Volkswagen's unlawful acts and practices complained of herein  
12 affect the public interest.

13           1206. As a direct and proximate result of Volkswagen's violations of the  
14 Nebraska CPA, Plaintiff and the Nebraska Subclass have suffered injury-in-fact and/or  
15 actual damage.

16           1207. Because Volkswagen's conduct caused injury to Nebraska Subclass  
17 Members' property through violations of the Nebraska CPA, the Nebraska Subclass  
18 seeks recovery of actual damages, as well as enhanced damages up to \$1,000, an order  
19 enjoining Volkswagen's unfair or deceptive acts and practices, costs of Court,  
20 reasonable attorneys' fees, and any other just and proper relief available under NEB.  
21 REV. STAT. § 59-1609.

22                                   **COUNT II**  
23                                   **FRAUD BY CONCEALMENT**

24           1208. Plaintiffs reallege and incorporate by reference all paragraphs as though  
25 fully set forth herein.

26           1209. This claim is brought on behalf of the Nebraska Subclass.

27           1210. Volkswagen intentionally concealed and suppressed material facts  
28 concerning the quality of the Affected Vehicles. As alleged in this Complaint,



1 notwithstanding references in the very model names of the subject vehicles as “Clean  
2 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
3 secret scheme to evade federal and state vehicle emissions standards by installing  
4 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
5 which contributes to the creation of ozone and smog. The software installed on the  
6 vehicles at issue was designed nefariously to kick-in during emissions certification  
7 testing, such that the vehicles would show far lower emissions than when actually  
8 operating on the road. The result was what Volkswagen intended: vehicles passed  
9 emissions certifications by way of deliberately induced false readings. Reportedly,  
10 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
11 vehicles at up to 40 times applicable standards.

12 1211. Plaintiff and Nebraska Subclass members reasonably relied upon  
13 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s  
14 representations were false and gravely misleading. As alleged herein, Volkswagen  
15 employed extremely sophisticated methods of deception. Plaintiff and Nebraska  
16 Subclass members did not, and could not, unravel Volkswagen’s deception on their  
17 own.

18 1212. Volkswagen concealed and suppressed material facts concerning what is  
19 evidently the true culture of Volkswagen—one characterized by an emphasis on  
20 profits and sales above compliance with federal and state clean air laws, and emissions  
21 regulations that are meant to protect the public and consumers. It also emphasized  
22 profits and sales over the trust that Plaintiff and Nebraska Subclass members placed in  
23 its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
24 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
25 intentional manipulation of the system. That’s just a whole other level of not only  
26 lying to the government, but also lying to your consumer. People buy diesel cars from  
27 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
28

1 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
2 want to be spewing noxious gases into the environment.”

3 1213. Necessarily, Volkswagen also took steps to ensure that its employees did  
4 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
5 Nebraska Subclass members. Volkswagen did so in order to boost the reputations of  
6 its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
7 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
8 with applicable law, including federal and state clean air laws and emissions  
9 regulations, and that its vehicles likewise comply with applicable law and regulations.  
10 Volkswagen’s false representations were material to consumers, both because they  
11 concerned the quality of the Affected Vehicles, including their compliance with  
12 applicable federal and state laws and regulations regarding clean air and emissions,  
13 and also because the representations played a significant role in the value of the  
14 vehicles. As Volkswagen well knew, its customers, including Plaintiff and Nebraska  
15 Subclass members, highly valued that the vehicles they were purchasing or leasing  
16 were *clean* diesel cars, and they paid accordingly.

17 1214. Volkswagen had a duty to disclose its emissions scheme because  
18 knowledge of the scheme and its details were known and/or accessible only to  
19 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
20 maintenance of its scheme, and because Volkswagen knew the facts were not known  
21 to or reasonably discoverable by Plaintiff or Nebraska Subclass members.  
22 Volkswagen also had a duty to disclose because it made general affirmative  
23 representations about the qualities of its vehicles with respect to emissions standards,  
24 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
25 which were misleading, deceptive, and incomplete without the disclosure of the  
26 additional facts set forth above regarding its emissions scheme, the actual emissions of  
27 its vehicles, its actual philosophy with respect to compliance with federal and state  
28

1 clean air laws and emissions regulations, and its actual practices with respect to the  
2 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
3 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
4 These omitted and concealed facts were material because they directly impact the  
5 value of the Affected Vehicles purchased or leased by Plaintiff and Nebraska Subclass  
6 members. Whether a manufacturer's products comply with federal and state clean air  
7 laws and emissions regulations, and whether that manufacturer tells the truth with  
8 respect to such compliance or non-compliance, are material concerns to a consumer,  
9 including with respect to the emissions certification testing their vehicles must pass.  
10 Volkswagen represented to Plaintiff and Nebraska Subclass members that they were  
11 purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—  
12 except that, secretly, Volkswagen had subverted the testing process thoroughly.

13 1215. Volkswagen actively concealed and/or suppressed these material facts, in  
14 whole or in part, to pad and protect its profits and to avoid the perception that its  
15 vehicles did not or could not comply with federal and state laws governing clean air  
16 and emissions, which perception would hurt the brand's image and cost Volkswagen  
17 money, and it did so at the expense of Plaintiff and Nebraska Subclass members.

18 1216. On information and belief, Volkswagen has still not made full and  
19 adequate disclosures, and continues to defraud Plaintiff and Nebraska Subclass  
20 members by concealing material information regarding the emissions qualities of its  
21 vehicles and its emissions scheme.

22 1217. Plaintiff and Nebraska Subclass members were unaware of the omitted  
23 material facts referenced herein, and they would not have acted as they did if they had  
24 known of the concealed and/or suppressed facts, in that they would not have  
25 purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would  
26 not have continued to drive their heavily polluting vehicles, or would have taken other  
27 affirmative steps in light of the information concealed from them. Plaintiff's and  
28

1 Nebraska Subclass Members' actions were justified. Volkswagen was in exclusive  
2 control of the material facts, and such facts were not known to the public, Plaintiff, or  
3 Nebraska Subclass members.

4 1218. Because of the concealment and/or suppression of the facts, Plaintiff and  
5 Nebraska Subclass members have sustained damage because they own vehicles that  
6 are diminished in value as a result of Volkswagen's concealment of the true quality  
7 and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose  
8 the actual emissions qualities and quantities of hundreds of thousands of Volkswagen-  
9 and Audi-branded vehicles and the serious issues engendered by Volkswagen's  
10 corporate policies. Had Plaintiff and Nebraska Subclass members been aware of  
11 Volkswagen's emissions scheme, and the company's callous disregard for compliance  
12 with applicable federal and state laws and regulations, Plaintiff and Nebraska Subclass  
13 members who purchased or leased new or previously owned vehicles would have paid  
14 less for their vehicles or would not have purchased or leased them at all.

15 1219. The value of Plaintiff's and Nebraska Subclass Members' vehicles has  
16 diminished as a result of Volkswagen's fraudulent concealment of its emissions  
17 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
18 to Plaintiff's and Nebraska Subclass members' vehicles and made any reasonable  
19 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
20 otherwise would have been fair market value for the vehicles. In addition, Class  
21 members are entitled to damages for loss of use, costs of additional fuel, costs of  
22 unused warranties, and other damages to be proved at trial.

23 1220. Accordingly, Volkswagen is liable to Plaintiff and Nebraska Subclass  
24 members for damages in an amount to be proven at trial.

25 1221. Volkswagen's acts were done wantonly, maliciously, oppressively,  
26 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and  
27 Nebraska Subclass members' rights and the representations that Volkswagen made to  
28

1 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
2 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
3 sufficient to deter such conduct in the future, which amount is to be determined  
4 according to proof.

5 **COUNT III**  
6 **BREACH OF CONTRACT**  
7 **(BASED ON NEBRASKA LAW)**

8 1222. Plaintiff incorporates by reference all preceding allegations as though  
9 fully set forth herein.

10 1223. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
11 owned vehicle purchasers in the Nebraska Subclass.

12 1224. Volkswagen's misrepresentations and omissions alleged herein, including  
13 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
14 defect and/or defective design as alleged herein, caused Plaintiff and the other  
15 Nebraska Subclass members to make their purchases or leases of their Affected  
16 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
17 Nebraska Subclass members would not have purchased or leased these Affected  
18 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
19 they paid, and/or would have purchased or leased less expensive alternative vehicles  
20 that did not contain the CleanDiesel engine system and which were not marketed as  
21 including such a system. Accordingly, Plaintiff and the other Nebraska Subclass  
22 members overpaid for their Affected Vehicles and did not receive the benefit of their  
23 bargain.

24 1225. Each and every sale or lease of an Affected Vehicle by an authorized  
25 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
26 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
27 other Nebraska Subclass members defective Affected Vehicles and by misrepresenting  
28 or failing to disclose the existence of the CleanDiesel engine system's defect and/or

1 defective design, including information known to Volkswagen rendering each  
 2 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 3 equipped with a CleanDiesel engine system.

4 1226. As a direct and proximate result of Volkswagen's breach of contract,  
 5 Plaintiff and the Nebraska Subclass have been damaged in an amount to be proven at  
 6 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 7 and consequential damages, and other damages allowed by law.

8 **DD. Claims Brought on Behalf of the Nevada Subclass**

9 **COUNT I**  
 10 **VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT**  
 11 **(NEV. REV. STAT. § 598.0903, *et seq.*)**

12 1227. Plaintiff Chad Ramos ("Plaintiff," for purposes of all Nevada Subclass  
 13 Counts) incorporates by reference all preceding allegations as though fully set forth  
 14 herein.

15 1228. This claim is brought only on behalf of the Nevada Subclass.

16 1229. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), NEV.  
 17 REV. STAT. § 598.0903, *et seq.* prohibits deceptive trade practices. NEV. REV. STAT.  
 18 § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the  
 19 course of business or occupation, the person: "5. Knowingly makes a false  
 20 representation as to the characteristics, ingredients, uses, benefits, alterations or  
 21 quantities of goods or services for sale or lease or a false representation as to the  
 22 sponsorship, approval, status, affiliation or connection of a person therewith"; "7.  
 23 Represents that goods or services for sale or lease are of a particular standard, quality  
 24 or grade, or that such goods are of a particular style or model, if he or she knows or  
 25 should know that they are of another standard, quality, grade, style or model"; "9.  
 26 Advertises goods or services with intent not to sell or lease them as advertised"; or  
 27 "15. Knowingly makes any other false representation in a transaction."  
 28

1           1230. Volkswagen engaged in deceptive trade practices that violated the  
2 Nevada DTPA, including: knowingly representing that Affected Vehicles have uses  
3 and benefits which they do not have; representing that Affected Vehicles are of a  
4 particular standard, quality, and grade when they are not; advertising Affected  
5 Vehicles with the intent not to sell or lease them as advertised; representing that the  
6 subject of a transaction involving Affected Vehicles has been supplied in accordance  
7 with a previous representation when it has not; and knowingly making other false  
8 representations in a transaction.

9           1231. Volkswagen's actions as set forth above occurred in the conduct of trade  
10 or commerce.

11           1232. In the course of its business, Volkswagen installed the "defeat device"  
12 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
13 and otherwise engaged in activities with a tendency or capacity to deceive.  
14 Volkswagen also engaged in unlawful trade practices by employing deception,  
15 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
16 omission of any material fact with intent that others rely upon such concealment,  
17 suppression or omission, in connection with the sale of Affected Vehicles.

18           1233. Volkswagen has known of its use of the "defeat device" and the true  
19 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
20 information until recently.

21           1234. Volkswagen was also aware that it valued profits over environmental  
22 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
23 distributing vehicles throughout the United States that did not comply with EPA  
24 regulations. Volkswagen concealed this information as well.

25           1235. By failing to disclose and by actively concealing the "defeat device" and  
26 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
27 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
28



1 by presenting itself as a reputable manufacturer that valued safety, environmental  
2 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
3 Volkswagen engaged in deceptive business practices in violation of the Nevada  
4 DTPA.

5 1236. In the course of Volkswagen's business, it willfully failed to disclose and  
6 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
7 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
8 compounded the deception by repeatedly asserting that the Affected Vehicles were  
9 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
10 be a reputable manufacturer that valued safety, environmental cleanliness and  
11 efficiency, and stood behind its vehicles once they are on the road.

12 1237. Volkswagen's unfair or deceptive acts or practices were likely to and did  
13 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
14 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
15 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
16 and the true value of the Affected Vehicles.

17 1238. Volkswagen intentionally and knowingly misrepresented material facts  
18 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Nevada  
19 Subclass.

20 1239. Volkswagen knew or should have known that its conduct violated the  
21 Nevada DTPA.

22 1240. As alleged above, Volkswagen made material statements about the safety,  
23 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
24 and Audi brands that were either false or misleading.

25 1241. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
26 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
27 cleanliness and integrity at Volkswagen, because Volkswagen:  
28

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1242. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1243. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Nevada Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1244. Plaintiffs and the Nevada Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information.

1245. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Nevada DTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished

1 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
2 practices that occurred in the course of Volkswagen's business.

3 1246. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
4 to the general public. Volkswagen's unlawful acts and practices complained of herein  
5 affect the public interest.

6 1247. As a direct and proximate result of Volkswagen's violations of the  
7 Nevada DTPA, Plaintiffs and the Nevada Subclass have suffered injury-in-fact and/or  
8 actual damage.

9 1248. Accordingly, Plaintiffs and the Nevada Subclass seek their actual  
10 damages, punitive damages, an order enjoining Volkswagen's deceptive acts or  
11 practices, costs of Court, attorney's fees, and all other appropriate and available  
12 remedies under the Nevada Deceptive Trade Practices Act. NEV. REV. STAT. § 41.600.

### 13 **COUNT II** 14 **FRAUD BY CONCEALMENT**

15 1249. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 1250. This claim is brought on behalf of the Nevada Subclass.

18 1251. Volkswagen intentionally concealed and suppressed material facts  
19 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
20 notwithstanding references in the very model names of the subject vehicles as "Clean  
21 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
22 secret scheme to evade federal and state vehicle emissions standards by installing  
23 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
24 which contributes to the creation of ozone and smog. The software installed on the  
25 vehicles at issue was designed nefariously to kick-in during emissions certification  
26 testing, such that the vehicles would show far lower emissions than when actually  
27 operating on the road. The result was what Volkswagen intended: vehicles passed  
28 emissions certifications by way of deliberately induced false readings. Reportedly,

1 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
2 vehicles at up to 40 times applicable standards.

3 1252. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
4 representations. They had no way of knowing that Volkswagen's representations were  
5 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
6 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
7 not, unravel Volkswagen's deception on their own.

8 1253. Volkswagen concealed and suppressed material facts concerning what is  
9 evidently the true culture of Volkswagen—one characterized by an emphasis on  
10 profits and sales above compliance with federal and state clean air laws, and emissions  
11 regulations that are meant to protect the public and consumers. It also emphasized  
12 profits and sales over the trust that Plaintiffs and Class members placed in its  
13 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
14 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
15 intentional manipulation of the system. That's just a whole other level of not only  
16 lying to the government, but also lying to your consumer. People buy diesel cars from  
17 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
18 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
19 want to be spewing noxious gases into the environment."

20 1254. Necessarily, Volkswagen also took steps to ensure that its employees did  
21 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
22 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
23 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
24 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
25 law, including federal and state clean air laws and emissions regulations, and that its  
26 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
27 representations were material to consumers, both because they concerned the quality  
28

1 of the Affected Vehicles, including their compliance with applicable federal and state  
2 laws and regulations regarding clean air and emissions, and also because the  
3 representations played a significant role in the value of the vehicles. As Volkswagen  
4 well knew, its customers, including Plaintiffs and Class members, highly valued that  
5 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
6 accordingly.

7 1255. Volkswagen had a duty to disclose its emissions scheme because  
8 knowledge of the scheme and its details were known and/or accessible only to  
9 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
10 maintenance of its scheme, and because Volkswagen knew the facts were not known  
11 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
12 duty to disclose because it made general affirmative representations about the qualities  
13 of its vehicles with respect to emissions standards, starting with references to them as  
14 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
15 and incomplete without the disclosure of the additional facts set forth above regarding  
16 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
17 respect to compliance with federal and state clean air laws and emissions regulations,  
18 and its actual practices with respect to the vehicles at issue. Having volunteered to  
19 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
20 partial truth, but the entire truth. These omitted and concealed facts were material  
21 because they directly impact the value of the Affected Vehicles purchased or leased by  
22 Plaintiffs and Class members. Whether a manufacturer's products comply with  
23 federal and state clean air laws and emissions regulations, and whether that  
24 manufacturer tells the truth with respect to such compliance or non-compliance, are  
25 material concerns to a consumer, including with respect to the emissions certification  
26 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
27 members that they were purchasing *clean* diesel vehicles, and certification testing  
28

1 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
2 process thoroughly.

3 1256. Volkswagen actively concealed and/or suppressed these material facts, in  
4 whole or in part, to pad and protect its profits and to avoid the perception that its  
5 vehicles did not or could not comply with federal and state laws governing clean air  
6 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
7 money, and it did so at the expense of Plaintiffs and Class members.

8 1257. On information and belief, Volkswagen has still not made full and  
9 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
10 concealing material information regarding the emission qualities of its vehicles and its  
11 emissions scheme.

12 1258. Plaintiffs and Class members were unaware of the omitted material facts  
13 referenced herein, and they would not have acted as they did if they had known of the  
14 concealed and/or suppressed facts, in that they would not have purchased purportedly  
15 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
16 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
17 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
18 were justified. Volkswagen was in exclusive control of the material facts, and such  
19 facts were not known to the public, Plaintiffs, or Class members.

20 1259. Because of the concealment and/or suppression of the facts, Plaintiffs and  
21 Class members have sustained damage because they own vehicles that are diminished  
22 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
23 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
24 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
25 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
26 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
27 scheme, and the company’s callous disregard for compliance with applicable federal  
28

1 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
2 new or previously owned vehicles would have paid less for their vehicles or would not  
3 have purchased or leased them at all.

4 1260. The value of Plaintiffs' and Class members' vehicles has diminished as a  
5 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
6 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
7 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
8 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
9 value for the vehicles. In addition, Class members are entitled to damages for loss of  
10 use, costs of additional fuel, costs of unused warranties, and other damages to be  
11 proved at trial.

12 1261. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
13 damages in an amount to be proven at trial.

14 1262. Volkswagen's acts were done wantonly, maliciously, oppressively,  
15 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
16 members' rights and the representations that Volkswagen made to them, in order to  
17 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
18 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
19 such conduct in the future, which amount is to be determined according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON NEVADA LAW)**

22 1263. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 1264. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the Nevada Subclass.

26 1265. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28



1 defect and/or defective design as alleged herein, caused Plaintiff and the other Nevada  
 2 Subclass members to make their purchases or leases of their Affected Vehicles.  
 3 Absent those misrepresentations and omissions, Plaintiff and the other Nevada  
 4 Subclass members would not have purchased or leased these Affected Vehicles, would  
 5 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
 6 would have purchased or leased less expensive alternative vehicles that did not contain  
 7 the CleanDiesel engine system and which were not marketed as including such a  
 8 system. Accordingly, Plaintiff and the other Nevada Subclass members overpaid for  
 9 their Affected Vehicles and did not receive the benefit of their bargain.

10 1266. Each and every sale or lease of an Affected Vehicle by an authorized  
 11 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 12 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 13 other Nevada Subclass members defective Affected Vehicles and by misrepresenting  
 14 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 15 defective design, including information known to Volkswagen, rendering each  
 16 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 17 equipped with a CleanDiesel engine system.

18 1267. As a direct and proximate result of Volkswagen's breach of contract,  
 19 Plaintiff and the Nevada Subclass have been damaged in an amount to be proven at  
 20 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 21 and consequential damages, and other damages allowed by law.

## 22 **EE. Claims on Behalf of the New Hampshire Subclass**

### 23 **COUNT I** 24 **VIOLATION OF N.H. CONSUMER PROTECTION ACT** **(N.H. REV. STAT. ANN. § 358-A:1, *et seq.*)**

25 1268. Plaintiff Steven Bolduc ("Plaintiff," for purposes of all New Hampshire  
 26 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 27 set forth herein.  
 28

1 1269. This claim is brought only on behalf of the New Hampshire Subclass.

2 1270. Plaintiffs, the New Hampshire Subclass, and Volkswagen are “persons”  
3 under the New Hampshire Consumer Protection Act (“New Hampshire CPA”), N.H.  
4 REV. STAT. § 358-A:1.

5 1271. Volkswagen’s actions as set forth herein occurred in the conduct of trade  
6 or commerce as defined under N.H. REV. STAT. § 358-A:1.

7 1272. The New Hampshire CPA prohibits a person, in the conduct of any trade  
8 or commerce, from using “any unfair or deceptive act or practice,” including “but ...  
9 not limited to, the following: ... (V) Representing that goods or services have ...  
10 characteristics, ... uses, benefits, or quantities that they do not have;” “(VII)  
11 Representing that goods or services are of a particular standard, quality, or grade, ... if  
12 they are of another;” and “(IX) Advertising goods or services with intent not to sell  
13 them as advertised.” N.H. REV. STAT. § 358-A:2.

14 1273. Volkswagen participated in unfair or deceptive acts or practices that  
15 violated the New Hampshire CPA as described above and below. By fraudulently  
16 installing the “defeat device” to make it appear that its CleanDiesel engine systems  
17 complied with EPA regulations, Volkswagen engaged in deceptive business practices  
18 prohibited by the CPA, including representing that Affected Vehicles have  
19 characteristics, uses, benefits, and qualities which they do not have; representing that  
20 Affected Vehicles are of a particular standard, quality, and grade when they are not;  
21 advertising Affected Vehicles with the intent not to sell or lease them as advertised;  
22 representing that the subject of a transaction involving Affected Vehicles has been  
23 supplied in accordance with a previous representation when it has not; and engaging in  
24 other unconscionable, false, misleading, or deceptive acts or practices in the conduct  
25 of trade or commerce.

26 1274. In the course of its business, Volkswagen installed the “defeat device”  
27 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
28

1 and otherwise engaged in activities with a tendency or capacity to deceive.  
2 Volkswagen also engaged in unlawful trade practices by employing deception,  
3 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
4 omission of any material fact with intent that others rely upon such concealment,  
5 suppression or omission, in connection with the sale of Affected Vehicles.

6 1275. Volkswagen has known of its use of the “defeat device” and the true  
7 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
8 information until recently.

9 1276. Volkswagen was also aware that it valued profits over environmental  
10 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
11 distributing vehicles throughout the United States that did not comply with EPA  
12 regulations. Volkswagen concealed this information as well.

13 1277. By failing to disclose and by actively concealing the “defeat device” and  
14 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
15 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
16 by presenting itself as a reputable manufacturer that valued safety, environmental  
17 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
18 Volkswagen engaged in unfair and deceptive business practices in violation of the  
19 New Hampshire CPA.

20 1278. In the course of Volkswagen’s business, it willfully failed to disclose and  
21 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
22 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
23 compounded the deception by repeatedly asserting that the Affected Vehicles were  
24 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
25 be a reputable manufacturer that valued safety, environmental cleanliness and  
26 efficiency, and stood behind its vehicles once they are on the road.

1279. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1280. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the New Hampshire Subclass.

1281. Volkswagen knew or should have known that its conduct violated the New Hampshire CPA.

1282. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1283. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the "defeat device" and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1284. Because Volkswagen fraudulently concealed the "defeat device" and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the "defeat device" and true characteristics of the

1 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
2 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
3 Volkswagen's conduct, they are now worth significantly less than they otherwise  
4 would be.

5 1285. Volkswagen's fraudulent use of the "defeat device" and its concealment  
6 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
7 and the New Hampshire Subclass. A vehicle made by a reputable manufacturer of  
8 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
9 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
10 the amount its cars pollutes rather than make environmentally friendly vehicles.

11 1286. Plaintiffs and the New Hampshire Subclass suffered ascertainable loss  
12 caused by Volkswagen's misrepresentations and its concealment of and failure to  
13 disclose material information.

14 1287. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
15 to refrain from unfair and deceptive acts or practices under the New Hampshire CPA.  
16 All owners of Affected Vehicles suffered ascertainable loss in the form of the  
17 diminished value of their vehicles as a result of Volkswagen's deceptive and unfair  
18 acts and practices that occurred in the course of Volkswagen's business.

19 1288. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
20 to the general public. Volkswagen's unlawful acts and practices complained of herein  
21 affect the public interest.

22 1289. As a direct and proximate result of Volkswagen's violations of the New  
23 Hampshire CPA, Plaintiffs and the New Hampshire Subclass have suffered injury-in-  
24 fact and/or actual damage.

25 1290. Because Volkswagen's willful conduct caused injury to New Hampshire  
26 Subclass members' property through violations of the New Hampshire CPA, the New  
27 Hampshire Subclass seeks recovery of actual damages or \$1,000, whichever is greater,  
28

1 treble damages, costs and reasonable attorneys' fees, an order enjoining Volkswagen's  
 2 unfair and/or deceptive acts and practices, and any other just and proper relief under  
 3 N.H. REV. STAT. § 358-A:10.

4 **COUNT II**  
 5 **FRAUD BY CONCEALMENT**

6 1291. Plaintiffs reallege and incorporate by reference all paragraphs as though  
 7 fully set forth herein.

8 1292. This claim is brought on behalf of the New Hampshire Subclass.

9 1293. Volkswagen intentionally concealed and suppressed material facts  
 10 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
 11 notwithstanding references in the very model names of the subject vehicles as "Clean  
 12 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
 13 secret scheme to evade federal and state vehicle emissions standards by installing  
 14 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
 15 which contributes to the creation of ozone and smog. The software installed on the  
 16 vehicles at issue was designed nefariously to kick-in during emissions certification  
 17 testing, such that the vehicles would show far lower emissions than when actually  
 18 operating on the road. The result was what Volkswagen intended: vehicles passed  
 19 emissions certifications by way of deliberately induced false readings. Reportedly,  
 20 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
 21 vehicles at up to 40 times applicable standards.

22 1294. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
 23 representations. They had no way of knowing that Volkswagen's representations were  
 24 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
 25 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
 26 not, unravel Volkswagen's deception on their own.

27 1295. Volkswagen concealed and suppressed material facts concerning what is  
 28 evidently the true culture of Volkswagen—one characterized by an emphasis on

1 profits and sales above compliance with federal and state clean air laws, and emissions  
2 regulations that are meant to protect the public and consumers. It also emphasized  
3 profits and sales over the trust that Plaintiffs and Class members placed in its  
4 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
5 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
6 intentional manipulation of the system. That’s just a whole other level of not only  
7 lying to the government, but also lying to your consumer. People buy diesel cars from  
8 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
9 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
10 want to be spewing noxious gases into the environment.”

11 1296. Necessarily, Volkswagen also took steps to ensure that its employees did  
12 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
13 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
14 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
15 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
16 law, including federal and state clean air laws and emissions regulations, and that its  
17 vehicles likewise comply with applicable laws and regulations. Volkswagen’s false  
18 representations were material to consumers, both because they concerned the quality  
19 of the Affected Vehicles, including their compliance with applicable federal and state  
20 laws and regulations regarding clean air and emissions, and also because the  
21 representations played a significant role in the value of the vehicles. As Volkswagen  
22 well knew, its customers, including Plaintiffs and Class members, highly valued that  
23 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
24 accordingly.

25 1297. Volkswagen had a duty to disclose its emissions scheme because  
26 knowledge of the scheme and its details were known and/or accessible only to  
27 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
28



1 maintenance of its scheme, and because Volkswagen knew the facts were not known  
2 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
3 duty to disclose because it made general affirmative representations about the qualities  
4 of its vehicles with respect to emissions standards, starting with references to them as  
5 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
6 and incomplete without the disclosure of the additional facts set forth above regarding  
7 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
8 respect to compliance with federal and state clean air laws and emissions regulations,  
9 and its actual practices with respect to the vehicles at issue. Having volunteered to  
10 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
11 partial truth, but the entire truth. These omitted and concealed facts were material  
12 because they directly impact the value of the Affected Vehicles purchased or leased by  
13 Plaintiffs and Class members. Whether a manufacturer's products comply with  
14 federal and state clean air laws and emissions regulations, and whether that  
15 manufacturer tells the truth with respect to such compliance or non-compliance, are  
16 material concerns to a consumer, including with respect to the emissions certification  
17 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
18 members that they were purchasing *clean* diesel vehicles, and certification testing  
19 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
20 process thoroughly.

21 1298. Volkswagen actively concealed and/or suppressed these material facts, in  
22 whole or in part, to pad and protect its profits and to avoid the perception that its  
23 vehicles did not or could not comply with federal and state laws governing clean air  
24 and emissions, which perception would hurt the brand's image and cost Volkswagen  
25 money, and it did so at the expense of Plaintiffs and Class members.

26 1299. On information and belief, Volkswagen has still not made full and  
27 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
28

1 concealing material information regarding the emission qualities of its vehicles and its  
2 emissions scheme.

3 1300. Plaintiffs and Class members were unaware of the omitted material facts  
4 referenced herein, and they would not have acted as they did if they had known of the  
5 concealed and/or suppressed facts, in that they would not have purchased purportedly  
6 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
7 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
8 light of the information concealed from them. Plaintiffs’ and Class members’ actions  
9 were justified. Volkswagen was in exclusive control of the material facts, and such  
10 facts were not known to the public, Plaintiffs, or Class members.

11 1301. Because of the concealment and/or suppression of the facts, Plaintiffs and  
12 Class members have sustained damage because they own vehicles that are diminished  
13 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
14 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
15 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
16 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
17 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
18 scheme, and the company’s callous disregard for compliance with applicable federal  
19 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
20 new or previously owned vehicles would have paid less for their vehicles or would not  
21 have purchased or leased them at all.

22 1302. The value of Plaintiffs’ and Class members’ vehicles has diminished as a  
23 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
24 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
25 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
26 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
27 value for the vehicles. In addition, Class members are entitled to damages for loss of  
28

1 use, costs of additional fuel, costs of unused warranties, and other damages to be  
2 proved at trial.

3 1303. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
4 damages in an amount to be proven at trial.

5 1304. Volkswagen's acts were done wantonly, maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
7 members' rights and the representations that Volkswagen made to them, in order to  
8 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
9 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
10 such conduct in the future, which amount is to be determined according to proof.

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
**(BASED ON NEW HAMPSHIRE LAW)**

13 1305. Plaintiff incorporates by reference all preceding allegations as though  
14 fully set forth herein.

15 1306. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
16 owned vehicle purchasers in the New Hampshire Subclass.

17 1307. Volkswagen's misrepresentations and omissions alleged herein, including  
18 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
19 defect and/or defective design as alleged herein, caused Plaintiff and the other New  
20 Hampshire Subclass members to make their purchases or leases of their Affected  
21 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other New  
22 Hampshire Subclass members would not have purchased or leased these Affected  
23 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
24 they paid, and/or would have purchased or leased less expensive alternative vehicles  
25 that did not contain the CleanDiesel Engine System and which were not marketed as  
26 including such a system. Accordingly, Plaintiff and the other New Hampshire  
27  
28

1 Subclass members overpaid for their Affected Vehicles and did not receive the benefit  
2 of their bargain.

3 1308. Each and every sale or lease of an Affected Vehicle by an authorized  
4 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
5 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
6 other New Hampshire Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
8 defect and/or defective design, including information known to Volkswagen rendering  
9 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
10 equipped with a CleanDiesel engine system.

11 1309. As a direct and proximate result of Volkswagen's breach of contract,  
12 Plaintiff and the New Hampshire Subclass have been damaged in an amount to be  
13 proven at trial, which shall include, but is not limited to, all compensatory damages,  
14 incidental and consequential damages, and other damages allowed by law.

15 **FF. Claims Brought on Behalf of the New Jersey Subclass**

16 **COUNT I**  
17 **VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT**  
**(N.J. STAT. ANN. §§ 56:8-1, *ET SEQ.*)**

18 1310. Plaintiff Joseph Avena ("Plaintiff," for purposes of all New Jersey Class  
19 Counts) incorporate by reference all preceding allegations as though fully set forth  
20 herein.

21 1311. Plaintiff brings this Count on behalf of the New Jersey Subclass.

22 1312. The New Jersey Consumer Fraud Act, N.J. STAT. ANN. §§ 56:8-1, *et seq.*  
23 ("NJ CFA"), prohibits unfair or deceptive acts or practices in the conduct of any trade  
24 or commerce.

25 1313. In the course of Volkswagen's business, it willfully failed to disclose and  
26 actively concealed that the CleanDiesel Engine System was non-EPA compliant, and  
27 the use of the "defeat device in Affected Vehicles as described above. Accordingly,  
28

1 Volkswagen engaged in unfair and deceptive trade practices, including representing  
2 that Affected Vehicles have characteristics, uses, benefits, and qualities which they do  
3 not have; representing that Affected Vehicles are of a particular standard and quality  
4 when they are not; advertising Affected Vehicles with the intent not to sell them as  
5 advertised; and otherwise engaging in conduct likely to deceive. Further,  
6 Volkswagen's acts and practices described herein offend established public policy  
7 because the harm they cause to consumers, motorists, and pedestrians outweighs any  
8 benefit associated with such practices, and because Volkswagen fraudulently  
9 concealed the defective nature of the Affected Vehicles from consumers.

10 1314. Volkswagen's actions as set forth above occurred in the conduct of trade  
11 or commerce.

12 1315. Volkswagen's conduct proximately caused injuries to Plaintiff and the  
13 other New Jersey Subclass members.

14 1316. Plaintiff and the other New Jersey Subclass members were injured as a  
15 result of Volkswagen's conduct in that Plaintiff and the other New Jersey Subclass  
16 members overpaid for their Affected Vehicles and did not receive the benefit of their  
17 bargain, and their Affected Vehicles have suffered a diminution in value. These  
18 injuries are the direct and natural consequence of Volkswagen's misrepresentations  
19 and omissions.

20 1317. Pursuant to N.J. STAT. ANN. § 56:8-20, Plaintiffs will serve the New  
21 Jersey Attorney General with a copy of this Complaint.

22 **COUNT II**  
23 **BREACH OF CONTRACT**  
**(BASED ON NEW JERSEY LAW)**

24 1318. Plaintiff incorporates by reference all preceding allegations as though  
25 fully set forth herein.

26 1319. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
27 owned vehicle purchasers in the New Jersey Subclass.

1           1320. Volkswagen's misrepresentations and omissions alleged herein, including  
2 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
3 defect and/or defective design as alleged herein, caused Plaintiff and the other New  
4 Jersey Subclass members to make their purchases or leases of their Affected Vehicles.  
5 Absent those misrepresentations and omissions, Plaintiff and the other New Jersey  
6 Subclass members would not have purchased or leased these Affected Vehicles, would  
7 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
8 would have purchased or leased less expensive alternative vehicles that did not contain  
9 the CleanDiesel engine system and which were not marketed as including such a  
10 system. Accordingly, Plaintiff and the other New Jersey Subclass members overpaid  
11 for their Affected Vehicles and did not receive the benefit of their bargain.

12           1321. Each and every sale or lease of an Affected Vehicle by an authorized  
13 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
14 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
15 other New Jersey Subclass members defective Affected Vehicles and by  
16 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
17 defect and/or defective design, including information known to Volkswagen rendering  
18 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
19 equipped with a CleanDiesel engine system.

20           1322. As a direct and proximate result of Volkswagen's breach of contract,  
21 Plaintiff and the New Jersey Subclass have been damaged in an amount to be proven  
22 at trial, which shall include, but is not limited to, all compensatory damages, incidental  
23 and consequential damages, and other damages allowed by law.

24                                   **COUNT III**  
25                                   **FRAUDULENT CONCEALMENT**

26           1323. Plaintiff incorporates by reference all preceding allegations as though  
27 fully set forth herein.

28           1324. Plaintiff brings this Count on behalf of the New Jersey Subclass.

1           1325. Volkswagen intentionally concealed that the CleanDiesel engine systems  
2 were not EPA-compliant and used a “defeat device”, or acted with reckless disregard  
3 for the truth, and denied Plaintiff and the other New Jersey Subclass members  
4 information that is highly relevant to their purchasing decision.

5           1326. Volkswagen further affirmatively misrepresented to Plaintiff in  
6 advertising and other forms of communication, including standard and uniform  
7 material provided with each car, that the Affected Vehicles it was selling were new,  
8 had no significant defects, complied with EPA regulations and would perform and  
9 operate properly when driven in normal usage.

10           1327. Volkswagen knew these representations were false when made.

11           1328. The Affected Vehicles purchased or leased by Plaintiff and the other New  
12 Jersey Subclass members were, in fact, defective, non-EPA compliant, unsafe, and  
13 unreliable because the Affected Vehicles contained faulty and defective CleanDiesel  
14 engine system, as alleged herein.

15           1329. Volkswagen had a duty to disclose that these Affected Vehicles were  
16 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
17 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
18 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
19 other New Jersey Subclass members relied on Volkswagen’s material representations  
20 that the Affected Vehicles they were purchasing were safe, environmentally clean,  
21 efficient and free from defects.

22           1330. The aforementioned concealment was material because if it had been  
23 disclosed Plaintiff and the other New Jersey Subclass members would not have bought  
24 or leased the Affected Vehicles, or would not have bought or leased those Vehicles at  
25 the prices they paid.

26           1331. The aforementioned representations were material because they were  
27 facts that would typically be relied on by a person purchasing or leasing a new motor  
28



1 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
 2 false because it knew that it had to use the “defeat device” in order for Affected  
 3 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
 4 false statements in order to sell Affected Vehicles.

5 1332. Plaintiff and the other New Jersey Subclass members relied on  
 6 Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and  
 7 defective nature of the CleanDiesel engine system and Volkswagen’s affirmative  
 8 assurance that its Affected Vehicles were safe and reliable, and other similar false  
 9 statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

10 1333. As a result of their reliance, Plaintiff and the other New Jersey Subclass  
 11 members have been injured in an amount to be proven at trial, including, but not  
 12 limited to, their lost benefit of the bargain and overpayment at the time of purchase or  
 13 lease and/or the diminished value of their Affected Vehicles.

14 1334. Volkswagen’s conduct was knowing, intentional, with malice,  
 15 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
 16 Plaintiff and the other New Jersey Subclass members. Plaintiff and the other New  
 17 Jersey Subclass members are therefore entitled to an award of punitive damages.

18 **GG. Claims Brought on Behalf of the New Mexico Subclass**

19 **COUNT I**  
 20 **VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT**  
 (N.M. STAT. ANN. §§ 57-12-1, *ET SEQ.*)

21 1335. Plaintiff Andrew Masters (“Plaintiff,” for purposes of all New Mexico  
 22 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 23 set forth herein.

24 1336. This claim is brought on behalf of the New Mexico Subclass.

25 1337. Volkswagen, Plaintiff and New Mexico Subclass Members are or were  
 26 “person[s]” under the New Mexico Unfair Trade Practices Act (“New Mexico  
 27 UTPA”), N.M. STAT. ANN. § 57-12-2.  
 28

1           1338. Volkswagen's actions as set forth herein occurred in the conduct of trade  
2 or commerce as defined under N.M. STAT. ANN. § 57-12-2.

3           1339. The New Mexico UTPA makes unlawful "a false or misleading oral or  
4 written statement, visual description or other representation of any kind knowingly  
5 made in connection with the sale, lease, rental or loan of goods or services ... by a  
6 person in the regular course of the person's trade or commerce, that may, tends to or  
7 does deceive or mislead any person," including but not limited to "failing to state a  
8 material fact if doing so deceives or tends to deceive." N.M. STAT. ANN. § 57-12-  
9 2(D). Volkswagen's acts and omissions described herein constitute unfair or  
10 deceptive acts or practices under N.M. STAT. ANN. § 57-12-2(D). In addition,  
11 Volkswagen's actions constitute unconscionable actions under N.M. STAT. ANN. § 57-  
12 12-2(E), since they took advantage of the lack of knowledge, ability, experience, and  
13 capacity of the New Mexico Subclass Members to a grossly unfair degree.

14           1340. In the course of its business, Volkswagen installed the "defeat device"  
15 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
16 and otherwise engaged in activities with a tendency or capacity to deceive.  
17 Volkswagen also engaged in unlawful trade practices by employing deception,  
18 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
19 omission of any material fact with intent that others rely upon such concealment,  
20 suppression or omission, in connection with the sale of Affected Vehicles.

21           1341. Volkswagen has known of its use of the "defeat device" and the true  
22 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
23 information until recently.

24           1342. Volkswagen was also aware that it valued profits over environmental  
25 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
26 distributing vehicles throughout the United States that did not comply with EPA  
27 regulations. Volkswagen concealed this information as well.  
28

1           1343. By failing to disclose and by actively concealing the “defeat device” and  
2 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
3 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
4 by presenting itself as a reputable manufacturer that valued safety, environmental  
5 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
6 Volkswagen engaged in deceptive business practices in violation of the New Mexico  
7 UTPA.

8           1344. In the course of Volkswagen’s business, it willfully failed to disclose and  
9 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
10 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
11 compounded the deception by repeatedly asserting that the Affected Vehicles were  
12 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
13 be a reputable manufacturer that valued safety, environmental cleanliness and  
14 efficiency, and stood behind its vehicles once they are on the road.

15           1345. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
16 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
17 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
18 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
19 value of the Affected Vehicles.

20           1346. Volkswagen intentionally and knowingly misrepresented material facts  
21 regarding the Affected Vehicles with an intent to mislead Plaintiff and the New  
22 Mexico Subclass.

23           1347. Volkswagen knew or should have known that its conduct violated the  
24 New Mexico UTPA.

25           1348. As alleged above, Volkswagen made material statements about the safety,  
26 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
27 and Audi brands that were either false or misleading.  
28

1 1349. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 2 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 3 cleanliness and integrity at Volkswagen, because Volkswagen:

- 4 a. Possessed exclusive knowledge that it valued profits  
 5 over environmental cleanliness, efficiency, and  
 6 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 7 b. Intentionally concealed the foregoing from Plaintiffs;  
 8 and/or
- 9 c. Made incomplete representations about the safety,  
 10 cleanliness, efficiency and reliability of the Affected  
 11 Vehicles generally, and the use of the “defeat device”  
 and true nature of the CleanDiesel engine system in  
 particular, while purposefully withholding material  
 12 facts from Plaintiffs that contradicted these  
 representations.

13 1350. Because Volkswagen fraudulently concealed the “defeat device” and the  
 14 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
 15 of negative publicity once the use of the “defeat device” and true characteristics of the  
 16 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
 17 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
 18 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
 19 would be.

20 1351. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
 21 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
 22 and the New Mexico Subclass. A vehicle made by a reputable manufacturer of  
 23 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
 24 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
 25 the amount its cars pollutes rather than make environmentally friendly vehicles.

26 1352. Plaintiffs and the New Mexico Subclass suffered ascertainable loss  
 27 caused by Volkswagen’s misrepresentations and its concealment of and failure to  
 28 disclose material information. Class members who purchased Affected Vehicles

1 either would have paid less for their vehicles or would not have purchased or leased  
2 them at all.

3 1353. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
4 to refrain from unfair and deceptive acts or practices under the New Mexico UTPA.  
5 All owners of Affected Vehicles suffered ascertainable loss in the form of the  
6 diminished value of their vehicles as a result of Volkswagen's deceptive and unfair  
7 acts and practices that occurred in the course of Volkswagen's business.

8 1354. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
9 to the general public. Volkswagen's unlawful acts and practices complained of herein  
10 affect the public interest.

11 1355. As a direct and proximate result of Volkswagen's violations of the New  
12 Mexico UTPA, Plaintiff and the New Mexico Subclass have suffered injury-in-fact  
13 and/or actual damage.

14 1356. New Mexico Subclass Members seek punitive damages against  
15 Volkswagen because Volkswagen's conduct was malicious, willful, reckless, wanton,  
16 fraudulent and in bad faith. Because Volkswagen's conduct was malicious, willful,  
17 reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

18 1357. Because Volkswagen's unconscionable, willful conduct caused actual  
19 harm to New Mexico Class Members, the New Mexico Subclass seeks recovery of  
20 actual damages or \$100, whichever is greater, discretionary treble damages, punitive  
21 damages, and reasonable attorneys' fees and costs, as well as all other proper and just  
22 relief available under N.M. STAT. ANN. § 57-12-10.

23 **COUNT II**  
24 **FRAUD BY CONCEALMENT**

25 1358. Plaintiffs reallege and incorporate by reference all paragraphs as though  
26 fully set forth herein.

27 1359. This claim is brought on behalf of the New Mexico Subclass.  
28

1           1360. Volkswagen intentionally concealed and suppressed material facts  
2 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
3 notwithstanding references in the very model names of the subject vehicles as “Clean  
4 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
5 secret scheme to evade federal and state vehicle emissions standards by installing  
6 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
7 which contributes to the creation of ozone and smog. The software installed on the  
8 vehicles at issue was designed nefariously to kick-in during emissions certification  
9 testing, such that the vehicles would show far lower emissions than when actually  
10 operating on the road. The result was what Volkswagen intended: vehicles passed  
11 emissions certifications by way of deliberately induced false readings. Reportedly,  
12 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
13 vehicles at up to 40 times applicable standards.

14           1361. Plaintiff and New Mexico Subclass members reasonably relied upon  
15 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s  
16 representations were false and gravely misleading. As alleged herein, Volkswagen  
17 employed extremely sophisticated methods of deception. Plaintiff and New Mexico  
18 Subclass members did not, and could not, unravel Volkswagen’s deception on their  
19 own.

20           1362. Volkswagen concealed and suppressed material facts concerning what is  
21 evidently the true culture of Volkswagen—one characterized by an emphasis on  
22 profits and sales above compliance with federal and state clean air laws, and emissions  
23 regulations that are meant to protect the public and consumers. It also emphasized  
24 profits and sales over the trust that Plaintiff and New Mexico Subclass members  
25 placed in its representations. As one customer, Priya Shah, put it in a quotation cited  
26 by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard  
27 and intentional manipulation of the system. That’s just a whole other level of not only  
28

1 lying to the government, but also lying to your consumer. People buy diesel cars from  
2 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
3 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
4 want to be spewing noxious gases into the environment.”

5 1363. Necessarily, Volkswagen also took steps to ensure that its employees did  
6 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
7 New Mexico Subclass members. Volkswagen did so in order to boost the reputations  
8 of its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
9 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
10 with applicable law, including federal and state clean air laws and emissions  
11 regulations, and that its vehicles likewise comply with applicable law and regulations.  
12 Volkswagen’s false representations were material to consumers, both because they  
13 concerned the quality of the Affected Vehicles, including their compliance with  
14 applicable federal and state laws and regulations regarding clean air and emissions,  
15 and also because the representations played a significant role in the value of the  
16 vehicles. As Volkswagen well knew, its customers, including Plaintiff and New  
17 Mexico Subclass members, highly valued that the vehicles they were purchasing or  
18 leasing were *clean* diesel cars, and they paid accordingly.

19 1364. Volkswagen had a duty to disclose its emissions scheme because  
20 knowledge of the scheme and its details were known and/or accessible only to  
21 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
22 maintenance of its scheme, and because Volkswagen knew the facts were not known  
23 to or reasonably discoverable by Plaintiff or New Mexico Subclass members.  
24 Volkswagen also had a duty to disclose because it made general affirmative  
25 representations about the qualities of its vehicles with respect to emissions standards,  
26 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
27 which were misleading, deceptive, and incomplete without the disclosure of the  
28



1 additional facts set forth above regarding its emissions scheme, the actual emissions of  
2 its vehicles, its actual philosophy with respect to compliance with federal and state  
3 clean air laws and emissions regulations, and its actual practices with respect to the  
4 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
5 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
6 These omitted and concealed facts were material because they directly impact the  
7 value of the Affected Vehicles purchased or leased by Plaintiff and New Mexico  
8 Subclass members. Whether a manufacturer's products comply with federal and state  
9 clean air laws and emissions regulations, and whether that manufacturer tells the truth  
10 with respect to such compliance or non-compliance, are material concerns to a  
11 consumer, including with respect to the emissions certification testing their vehicles  
12 must pass. Volkswagen represented to Plaintiff and New Mexico Subclass members  
13 that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
14 confirm this—except that, secretly, Volkswagen had subverted the testing process  
15 thoroughly.

16 1365. Volkswagen actively concealed and/or suppressed these material facts, in  
17 whole or in part, to pad and protect its profits and to avoid the perception that its  
18 vehicles did not or could not comply with federal and state laws governing clean air  
19 and emissions, which perception would hurt the brand's image and cost Volkswagen  
20 money, and it did so at the expense of Plaintiff and New Mexico Subclass members.

21 1366. On information and belief, Volkswagen has still not made full and  
22 adequate disclosures, and continues to defraud Plaintiff and New Mexico Subclass  
23 members by concealing material information regarding the emissions qualities of its  
24 vehicles and its emissions scheme.

25 1367. Plaintiff and New Mexico Subclass members were unaware of the  
26 omitted material facts referenced herein, and they would not have acted as they did if  
27 they had known of the concealed and/or suppressed facts, in that they would not have  
28

1 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
2 not have continued to drive their heavily polluting vehicles, or would have taken other  
3 affirmative steps in light of the information concealed from them. Plaintiff’s and New  
4 Mexico Subclass Members’ actions were justified. Volkswagen was in exclusive  
5 control of the material facts, and such facts were not known to the public, Plaintiff, or  
6 New Mexico Subclass members.

7 1368. Because of the concealment and/or suppression of the facts, Plaintiff and  
8 New Mexico Subclass members have sustained damage because they own vehicles  
9 that are diminished in value as a result of Volkswagen’s concealment of the true  
10 quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely  
11 disclose the actual emissions qualities and quantities of hundreds of thousands of  
12 Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
13 Volkswagen’s corporate policies. Had Plaintiff and New Mexico Subclass members  
14 been aware of Volkswagen’s emissions scheme, and the company’s callous disregard  
15 for compliance with applicable federal and state laws and regulations, Plaintiff and  
16 New Mexico Subclass members who purchased or leased new or previously owned  
17 vehicles would have paid less for their vehicles or would not have purchased or leased  
18 them at all.

19 1369. The value of Plaintiff’s and New Mexico Subclass Members’ vehicles  
20 have diminished as a result of Volkswagen’s fraudulent concealment of its emissions  
21 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
22 to Plaintiff’s and New Mexico Subclass members’ vehicles and made any reasonable  
23 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
24 otherwise would have been fair market value for the vehicles. In addition, Class  
25 members are entitled to damages for loss of use, costs of additional fuel, costs of  
26 unused warranties, and other damages to be proved at trial.

1 1370. Accordingly, Volkswagen is liable to Plaintiff and New Mexico Subclass  
2 members for damages in an amount to be proven at trial.

3 1371. Volkswagen's acts were done wantonly, maliciously, oppressively,  
4 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and New  
5 Mexico Subclass members' rights and the representations that Volkswagen made to  
6 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
7 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
8 sufficient to deter such conduct in the future, which amount is to be determined  
9 according to proof.

10 **COUNT III**  
11 **BREACH OF CONTRACT**  
**(BASED ON NEW MEXICO LAW)**

12 1372. Plaintiff incorporates by reference all preceding allegations as though  
13 fully set forth herein.

14 1373. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
15 owned vehicle purchasers in the New Mexico Subclass.

16 1374. Volkswagen's misrepresentations and omissions alleged herein, including  
17 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
18 defect and/or defective design as alleged herein, caused Plaintiff and the other New  
19 Mexico Subclass members to make their purchases or leases of their Affected  
20 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other New  
21 Mexico Subclass members would not have purchased or leased these Affected  
22 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
23 they paid, and/or would have purchased or leased less expensive alternative vehicles  
24 that did not contain the CleanDiesel engine system and which were not marketed as  
25 including such a system. Accordingly, Plaintiff and the other New Mexico Subclass  
26 members overpaid for their Affected Vehicles and did not receive the benefit of their  
27 bargain.  
28

1375. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other New Mexico Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1376. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the New Mexico Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

#### **HH. Claims Brought on Behalf of the New York Subclass**

### **COUNT I VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (N.Y. GEN. BUS. LAW § 349)**

1377. Plaintiff Steven Kolpan ("Plaintiff," for purposes of all New York Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1378. Plaintiffs bring this Count on behalf of the New York Subclass.

1379. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

1380. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel engine system was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in N.Y. GEN. BUS. LAW § 349, including representing that Affected Vehicles have characteristics, uses,

1 benefits, and qualities which they do not have; representing that Affected Vehicles are  
 2 of a particular standard and quality when they are not; advertising Affected Vehicles  
 3 with the intent not to sell them as advertised; and otherwise engaging in conduct likely  
 4 to deceive.

5 1381. Volkswagen's actions as set forth above occurred in the conduct of trade  
 6 or commerce.

7 1382. Because Volkswagen's deception takes place in the context of automobile  
 8 safety, its deception affects the public interest. Further, Volkswagen's unlawful  
 9 conduct constitutes unfair acts or practices that have the capacity to deceive  
 10 consumers, and that have a broad impact on consumers at large.

11 1383. Volkswagen's conduct proximately caused injuries to Plaintiffs and the  
 12 other Class members.

13 1384. Plaintiffs and the other Class members were injured as a result of  
 14 Volkswagen's conduct in that Plaintiffs and the other Class members overpaid for  
 15 their Affected Vehicles and did not receive the benefit of their bargain, and their  
 16 Affected Vehicles have suffered a diminution in value. These injuries are the direct  
 17 and natural consequence of Volkswagen's misrepresentations and omissions.

18 **COUNT II**  
 19 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**  
 20 **(N.Y. GEN. BUS. LAW § 350)**

21 1385. Plaintiffs incorporate by reference all preceding allegations as though  
 22 fully set forth herein.

23 1386. Plaintiffs bring this Count on behalf of the New York Subclass.

24 1387. New York's General Business Law § 350 makes unlawful "[f]alse  
 25 advertising in the conduct of any business, trade or commerce[.]" False advertising  
 26 includes "advertising, including labeling, of a commodity ... if such advertising is  
 27 misleading in a material respect," taking into account "the extent to which the  
 28

1 advertising fails to reveal facts material in the light of ... representations [made] with  
2 respect to the commodity....” N.Y. GEN. BUS. LAW § 350-a.

3 1388. Volkswagen caused to be made or disseminated throughout New York,  
4 through advertising, marketing, and other publications, statements that were untrue or  
5 misleading, and which were known, or which by the exercise of reasonable care  
6 should have been known to Volkswagen, to be untrue and misleading to consumers,  
7 including Plaintiffs and the other Class members.

8 1389. Volkswagen has violated N.Y. GEN. BUS. LAW § 350 because the  
9 misrepresentations and omissions regarding that the CleanDiesel engine system was  
10 non-EPA compliant, and the use of the “defeat device” in Affected Vehicles as  
11 described above, as well as the inherently defective nature of the CleanDiesel engine  
12 system as designed and sold by Volkswagen, were material and likely to deceive a  
13 reasonable consumer.

14 1390. Plaintiffs and the other Class members have suffered injury, including the  
15 loss of money or property, as a result of Volkswagen’s false advertising. In  
16 purchasing or leasing their Affected Vehicles, Plaintiffs and the other Class members  
17 relied on the misrepresentations and/or omissions of Volkswagen with respect to the  
18 safety, quality, functionality, and reliability of the Affected Vehicles. Volkswagen’s  
19 representations turned out to be untrue because the CleanDiesel engine system  
20 installed in Affected Vehicles did not comply with EPA regulations. Had Plaintiffs  
21 and the other Class members known this, they would not have purchased or leased  
22 their Affected Vehicles and/or paid as much for them.

23 1391. Accordingly, Plaintiffs and the other Class members overpaid for their  
24 Affected Vehicles and did not receive the benefit of the bargain for their Affected  
25 Vehicles, which have also suffered diminution in value.

26 1392. Plaintiffs, individually and on behalf of the other Class members, request  
27 that this Court enter such orders or judgments as may be necessary to enjoin  
28

1 Volkswagen from continuing its unfair, unlawful and/or deceptive practices. Plaintiffs  
 2 and the other Class members are also entitled to recover their actual damages or \$500,  
 3 whichever is greater. Because Volkswagen acted willfully or knowingly, Plaintiffs  
 4 and the other Class members are entitled to recover three times actual damages, up to  
 5 \$10,000.

6 **COUNT III**  
 7 **BREACH OF CONTRACT**  
 8 **(BASED ON NEW YORK LAW)**

9 1393. Plaintiff incorporates by reference all preceding allegations as though  
 10 fully set forth herein.

11 1394. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
 12 owned vehicle purchasers in the New York Subclass.

13 1395. Volkswagen's misrepresentations and omissions alleged herein, including  
 14 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
 15 defect and/or defective design as alleged herein, caused Plaintiff and the other New  
 16 York Subclass members to make their purchases or leases of their Affected Vehicles.  
 17 Absent those misrepresentations and omissions, Plaintiff and the other New York  
 18 Subclass members would not have purchased or leased these Affected Vehicles, would  
 19 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
 20 would have purchased or leased less expensive alternative vehicles that did not contain  
 21 the CleanDiesel engine system and which were not marketed as including such a  
 22 system. Accordingly, Plaintiff and the other New York Subclass members overpaid  
 23 for their Affected Vehicles and did not receive the benefit of their bargain.

24 1396. Each and every sale or lease of an Affected Vehicle by an authorized  
 25 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 26 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 27 other New York Subclass members defective Affected Vehicles and by  
 28 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's



1 defect and/or defective design, including information known to Volkswagen rendering  
 2 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 3 equipped with a CleanDiesel engine system.

4 1397. As a direct and proximate result of Volkswagen's breach of contract,  
 5 Plaintiff and the New York Subclass have been damaged in an amount to be proven at  
 6 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 7 and consequential damages, and other damages allowed by law.

8 **COUNT IV**  
 9 **FRAUDULENT CONCEALMENT**  
 10 **(BASED ON NEW YORK LAW)**

11 1398. Plaintiffs incorporate by reference all preceding allegations as though  
 12 fully set forth herein.

13 1399. Plaintiffs bring this Count on behalf of the New York Subclass.

14 1400. Volkswagen intentionally concealed that the CleanDiesel engine systems  
 15 were not EPA-compliant and used a "defeat device," or acted with reckless disregard  
 16 for the truth, and denied Plaintiffs and the other Class members information that is  
 17 highly relevant to their purchasing decision.

18 1401. Volkswagen further affirmatively misrepresented to Plaintiffs in  
 19 advertising and other forms of communication, including standard and uniform  
 20 material provided with each car, that the Affected Vehicles it was selling were new,  
 21 had no significant defects, complied with EPA regulations and would perform and  
 22 operate properly when driven in normal usage.

23 1402. Volkswagen knew these representations were false when made.

24 1403. The Affected Vehicles purchased or leased by Plaintiffs and the other  
 25 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
 26 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
 27 system, as alleged herein.  
 28

1           1404. Volkswagen had a duty to disclose that these Affected Vehicles were  
2 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
3 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
4 device” installed in the defective CleanDiesel engine system, because Plaintiffs and  
5 the other Class members relied on Volkswagen’s material representations that the  
6 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
7 and free from defects.

8           1405. The aforementioned concealment was material because if it had been  
9 disclosed Plaintiffs and the other Class members would not have bought or leased the  
10 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
11 they paid.

12           1406. The aforementioned representations were material because they were  
13 facts that would typically be relied on by a person purchasing or leasing a new motor  
14 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
15 false because it knew that it had to use the “defeat device” in order for Affected  
16 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
17 false statements in order to sell Affected Vehicles.

18           1407. Plaintiffs and the other Class members relied on Volkswagen’s reputation  
19 – along with Volkswagen’s failure to disclose the faulty and defective nature of the  
20 CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected  
21 Vehicles were safe and reliable, and complied with environmental regulations – in  
22 purchasing or leasing Volkswagen’s Affected Vehicles.

23           1408. As a result of their reliance, Plaintiffs and the other Class members have  
24 been injured in an amount to be proven at trial, including, but not limited to, their lost  
25 benefit of the bargain and overpayment at the time of purchase or lease and/or the  
26 diminished value of their Affected Vehicles.

1409. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

## **II. Claims Brought on Behalf of the North Carolina Subclass**

### **COUNT I VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (N.C. GEN. STAT. §§ 75-1.1, *et seq.*)**

1410. Plaintiff Paul Puryear ("Plaintiff," for purposes of all North Carolina Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1411. Plaintiff brings this Count on behalf of the North Carolina Subclass.

1412. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. §§ 75-1.1, *et seq.* ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. GEN. STAT. § 75-16.

1413. Volkswagen's acts and practices complained of herein were performed in the course of Volkswagen's trade or business and thus occurred in or affected "commerce," as defined in N.C. GEN. STAT. § 75-1.1(b).

1414. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they

1 are not; advertising Affected Vehicles with the intent not to sell them as advertised;  
2 and otherwise engaging in conduct likely to deceive.

3 1415. Volkswagen's conduct proximately caused injuries to Plaintiff and the  
4 other Class members.

5 1416. Volkswagen acted with willful and conscious disregard of the rights and  
6 safety of others, subjecting Plaintiff and the other Class members to cruel and unjust  
7 hardship as a result, such that an award of punitive damages is appropriate.

8 1417. Plaintiff and the other Class members were injured as a result of  
9 Volkswagen's conduct in that Plaintiff and the other Class members overpaid for their  
10 Affected Vehicles and did not receive the benefit of their bargain, and their Affected  
11 Vehicles have suffered a diminution in value. These injuries are the direct and natural  
12 consequence of Volkswagen's misrepresentations and omissions.

13 1418. Plaintiff, individually and on behalf of the other Class members, seeks  
14 treble damages pursuant to N.C. GEN. STAT. § 75-16, and an award of attorneys' fees  
15 pursuant to N.C. GEN. STAT. § 75-16.1.

16 **COUNT II**  
17 **BREACH OF CONTRACT**  
**(BASED ON NORTH CAROLINA LAW)**

18 1419. Plaintiff incorporates by reference all preceding allegations as though  
19 fully set forth herein.

20 1420. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
21 owned vehicle purchasers in the North Carolina Class.

22 1421. Volkswagen's misrepresentations and omissions alleged herein, including  
23 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
24 defect and/or defective design as alleged herein, caused Plaintiff and the other North  
25 Carolina Class members to make their purchases or leases of their Affected Vehicles.  
26 Absent those misrepresentations and omissions, Plaintiff and the other North Carolina  
27 Class members would not have purchased or leased these Affected Vehicles, would  
28

1 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
2 would have purchased or leased less expensive alternative vehicles that did not contain  
3 the CleanDiesel engine system and which were not marketed as including such a  
4 system. Accordingly, Plaintiff and the other North Carolina Class members overpaid  
5 for their Affected Vehicles and did not receive the benefit of their bargain.

6 1422. Each and every sale or lease of an Affected Vehicle by an authorized  
7 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
8 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
9 other North Carolina Class members defective Affected Vehicles and by  
10 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
11 defect and/or defective design, including information known to Volkswagen rendering  
12 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
13 equipped with a CleanDiesel engine system.

14 1423. As a direct and proximate result of Volkswagen's breach of contract,  
15 Plaintiff and the North Carolina Class have been damaged in an amount to be proven  
16 at trial, which shall include, but is not limited to, all compensatory damages, incidental  
17 and consequential damages, and other damages allowed by law.

18 **COUNT III**  
19 **FRAUDULENT CONCEALMENT**  
**(BASED ON NORTH CAROLINA LAW)**

20 1424. Plaintiff incorporates by reference all preceding allegations as though  
21 fully set forth herein.

22 1425. Plaintiff brings this Count on behalf of the North Carolina Class.

23 1426. Volkswagen intentionally concealed that the CleanDiesel engine systems  
24 were not EPA-compliant and used a "defeat device," or acted with reckless disregard  
25 for the truth, and denied Plaintiff and the other Class members information that is  
26 highly relevant to their purchasing decision.

1           1427. Volkswagen further affirmatively misrepresented to Plaintiff in  
2 advertising and other forms of communication, including standard and uniform  
3 material provided with each car, that the Affected Vehicles it was selling were new,  
4 had no significant defects, complied with EPA regulations and would perform and  
5 operate properly when driven in normal usage.

6           1428. Volkswagen knew these representations were false when made.

7           1429. The Affected Vehicles purchased or leased by Plaintiff and the other  
8 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
9 because the Affected Vehicles contained faulty and defective CleanDiesel engine  
10 system, as alleged herein.

11           1430. Volkswagen had a duty to disclose that these Affected Vehicles were  
12 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
13 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
14 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
15 other Class members relied on Volkswagen’s material representations that the  
16 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
17 and free from defects.

18           1431. The aforementioned concealment was material because if it had been  
19 disclosed Plaintiff and the other Class members would not have bought or leased the  
20 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
21 they paid.

22           1432. The aforementioned representations were material because they were  
23 facts that would typically be relied on by a person purchasing or leasing a new motor  
24 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
25 false because it knew that it had to use the “defeat device” in order for Affected  
26 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
27 false statements in order to sell Affected Vehicles.  
28

1 1433. Plaintiff and the other Class members relied on Volkswagen's reputation  
 2 – along with Volkswagen's failure to disclose the faulty and defective nature of the  
 3 CleanDiesel engine system and Volkswagen's affirmative assurance that its Affected  
 4 Vehicles were safe and reliable, and other similar false statements – in purchasing or  
 5 leasing Volkswagen's Affected Vehicles.

6 1434. As a result of their reliance, Plaintiff and the other Class members have  
 7 been injured in an amount to be proven at trial, including, but not limited to, their lost  
 8 benefit of the bargain and overpayment at the time of purchase or lease and/or the  
 9 diminished value of their Affected Vehicles.

10 1435. Volkswagen's conduct was knowing, intentional, with malice,  
 11 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
 12 Plaintiff and the other Class members. Plaintiff and the other Class members are  
 13 therefore entitled to an award of punitive damages.

14 **JJ. Claims Brought on Behalf of the North Dakota Subclass**

15 **COUNT I**  
 16 **VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT**  
**(N.D. CENT. CODE § 51-15-02)**

17 1436. Plaintiff Michelle Gramling ("Plaintiff," for purposes of all North Dakota  
 18 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 19 set forth herein.

20 1437. This claim is brought on behalf of North Dakota Subclass.

21 1438. Plaintiff, the North Dakota Subclass Members, and Volkswagen are  
 22 "persons" within the meaning of N.D. CENT. CODE § 51-15-02(4).

23 1439. Volkswagen engaged in the "sale" of "merchandise" within the meaning  
 24 of N.D. CENT. CODE § 51-15-02(3), (5).

25 1440. The North Dakota Consumer Fraud Act ("North Dakota CFA") makes  
 26 unlawful "[t]he act, use, or employment by any person of any deceptive act or  
 27 practice, fraud, false pretense, false promise, or misrepresentation, with the intent that  
 28



1 others rely thereon in connection with the sale or advertisement of any  
2 merchandise....” N.D. CENT. CODE § 51-15-02. As set forth above and below,  
3 Volkswagen committed deceptive acts or practices, with the intent that North Dakota  
4 Subclass Members rely thereon in connection with their purchase or lease of the  
5 Affected Vehicles.

6 1441. In the course of its business, Volkswagen installed the “defeat device”  
7 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
8 and otherwise engaged in activities with a tendency or capacity to deceive.  
9 Volkswagen also engaged in unlawful trade practices by employing deception,  
10 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
11 omission of any material fact with intent that others rely upon such concealment,  
12 suppression or omission, in connection with the sale of Affected Vehicles.

13 1442. Volkswagen has known of its use of the “defeat device” and the true  
14 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
15 information until recently.

16 1443. Volkswagen was also aware that it valued profits over environmental  
17 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
18 distributing vehicles throughout the United States that did not comply with EPA  
19 regulations. Volkswagen concealed this information as well.

20 1444. By failing to disclose and by actively concealing the “defeat device” and  
21 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
22 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
23 by presenting itself as a reputable manufacturer that valued safety, environmental  
24 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
25 Volkswagen engaged in deceptive business practices in violation of the North Dakota  
26 CFA.

1           1445. In the course of Volkswagen's business, it willfully failed to disclose and  
2 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
3 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
4 compounded the deception by repeatedly asserting that the Affected Vehicles were  
5 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
6 be a reputable manufacturer that valued safety, environmental cleanliness and  
7 efficiency, and stood behind its vehicles once they are on the road.

8           1446. Volkswagen's unfair or deceptive acts or practices were likely to and did  
9 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
10 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
11 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
12 value of the Affected Vehicles.

13           1447. Volkswagen intentionally and knowingly misrepresented material facts  
14 regarding the Affected Vehicles with an intent to mislead Plaintiff and the North  
15 Dakota Subclass.

16           1448. Volkswagen knew or should have known that its conduct violated the  
17 North Dakota CFA.

18           1449. As alleged above, Volkswagen made material statements about the safety,  
19 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
20 and Audi brands that were either false or misleading.

21           1450. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
22 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
23 cleanliness and integrity at Volkswagen, because Volkswagen:

- 24           a. Possessed exclusive knowledge that it valued profits  
25 over environmental cleanliness, efficiency, and  
26 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 27           b. Intentionally concealed the foregoing from Plaintiffs;  
28 and/or

- 1           c.     Made incomplete representations about the safety,  
2           cleanliness, efficiency and reliability of the Affected  
3           Vehicles generally, and the use of the “defeat device”  
4           and true nature of the CleanDiesel engine system in  
5           particular, while purposefully withholding material  
6           facts from Plaintiffs that contradicted these  
7           representations.

8           1451. Because Volkswagen fraudulently concealed the “defeat device” and the  
9           true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
10          of negative publicity once the use of the “defeat device” and true characteristics of the  
11          CleanDiesel engine system finally began to be disclosed, the value of the Affected  
12          Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
13          Volkswagen’s conduct, they are now worth significantly less than they otherwise  
14          would be.

15          1452. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
16          of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
17          and the North Dakota Subclass. A vehicle made by a reputable manufacturer of  
18          environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
19          made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
20          the amount its cars pollutes rather than make environmentally friendly vehicles.

21          1453. Plaintiff and the North Dakota Subclass suffered ascertainable loss  
22          caused by Volkswagen’s misrepresentations and its concealment of and failure to  
23          disclose material information. Class members who purchased Affected Vehicles  
24          either would have paid less for their vehicles or would not have purchased or leased  
25          them at all.

26          1454. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
27          to refrain from unfair and deceptive acts or practices under the North Dakota CFA.  
28          And, in any event, they suffered ascertainable loss in the form of the diminished value  
29          of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices  
30          that occurred in the course of Volkswagen’s business.

1 1455. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
 2 to the general public. Volkswagen's unlawful acts and practices complained of herein  
 3 affect the public interest.

4 1456. As a direct and proximate result of Volkswagen's violations of the North  
 5 Dakota CFA, Plaintiff and the North Dakota Subclass have suffered injury-in-fact  
 6 and/or actual damage.

7 1457. North Dakota Subclass Members seek punitive damages against  
 8 Volkswagen because Volkswagen's conduct was egregious. Volkswagen's egregious  
 9 conduct warrants punitive damages.

10 1458. Further, Volkswagen knowingly committed the conduct described above,  
 11 and thus, under N.D. CENT. CODE § 51-15-09, Volkswagen is liable to Plaintiffs and  
 12 the North Dakota Subclass for treble damages in amounts to be proven at trial, as well  
 13 as attorneys' fees, costs, and disbursements. Plaintiffs further seek an order enjoining  
 14 Volkswagen's unfair and/or deceptive acts or practices, and other just and proper  
 15 available relief under the North Dakota CFA.

16 **COUNT II**  
 17 **FRAUD BY CONCEALMENT**

18 1459. Plaintiffs reallege and incorporate by reference all paragraphs as though  
 19 fully set forth herein.

20 1460. This claim is brought on behalf of the North Dakota Subclass.

21 1461. Volkswagen intentionally concealed and suppressed material facts  
 22 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
 23 notwithstanding references in the very model names of the subject vehicles as "Clean  
 24 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
 25 secret scheme to evade federal and state vehicle emissions standards by installing  
 26 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
 27 which contributes to the creation of ozone and smog. The software installed on the  
 28 vehicles at issue was designed nefariously to kick-in during emissions certification

1 testing, such that the vehicles would show far lower emissions than when actually  
2 operating on the road. The result was what Volkswagen intended: vehicles passed  
3 emissions certifications by way of deliberately induced false readings. Reportedly,  
4 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
5 vehicles at up to 40 times applicable standards.

6 1462. Plaintiff and North Dakota Subclass members reasonably relied upon  
7 Volkswagen's false representations. They had no way of knowing that Volkswagen's  
8 representations were false and gravely misleading. As alleged herein, Volkswagen  
9 employed extremely sophisticated methods of deception. Plaintiff and North Dakota  
10 Subclass members did not, and could not, unravel Volkswagen's deception on their  
11 own.

12 1463. Volkswagen concealed and suppressed material facts concerning what is  
13 evidently the true culture of Volkswagen—one characterized by an emphasis on  
14 profits and sales above compliance with federal and state clean air laws, and emissions  
15 regulations that are meant to protect the public and consumers. It also emphasized  
16 profits and sales over the trust that Plaintiff and North Dakota Subclass members  
17 placed in its representations. As one customer, Priya Shah, put it in a quotation cited  
18 by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard  
19 and intentional manipulation of the system. That's just a whole other level of not only  
20 lying to the government, but also lying to your consumer. People buy diesel cars from  
21 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
22 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
23 want to be spewing noxious gases into the environment."

24 1464. Necessarily, Volkswagen also took steps to ensure that its employees did  
25 not reveal the details of its scheme to regulators or consumers, including Plaintiff and  
26 North Dakota Subclass members. Volkswagen did so in order to boost the reputations  
27 of its vehicles and to falsely assure purchasers and lessors of its vehicles, including  
28

1 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies  
2 with applicable law, including federal and state clean air laws and emissions  
3 regulations, and that its vehicles likewise comply with applicable law and regulations.  
4 Volkswagen's false representations were material to consumers, both because they  
5 concerned the quality of the Affected Vehicles, including their compliance with  
6 applicable federal and state laws and regulations regarding clean air and emissions,  
7 and also because the representations played a significant role in the value of the  
8 vehicles. As Volkswagen well knew, its customers, including Plaintiff and North  
9 Dakota Subclass members, highly valued that the vehicles they were purchasing or  
10 leasing were *clean* diesel cars, and they paid accordingly.

11 1465. Volkswagen had a duty to disclose its emissions scheme because  
12 knowledge of the scheme and its details were known and/or accessible only to  
13 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
14 maintenance of its scheme, and because Volkswagen knew the facts were not known  
15 to or reasonably discoverable by Plaintiff or North Dakota Subclass members.  
16 Volkswagen also had a duty to disclose because it made general affirmative  
17 representations about the qualities of its vehicles with respect to emissions standards,  
18 starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines,  
19 which were misleading, deceptive, and incomplete without the disclosure of the  
20 additional facts set forth above regarding its emissions scheme, the actual emissions of  
21 its vehicles, its actual philosophy with respect to compliance with federal and state  
22 clean air laws and emissions regulations, and its actual practices with respect to the  
23 vehicles at issue. Having volunteered to provide information to Plaintiffs,  
24 Volkswagen had the duty to disclose not just the partial truth, but the entire truth.  
25 These omitted and concealed facts were material because they directly impact the  
26 value of the Affected Vehicles purchased or leased by Plaintiff and North Dakota  
27 Subclass members. Whether a manufacturer's products comply with federal and state  
28

1 clean air laws and emissions regulations, and whether that manufacturer tells the truth  
2 with respect to such compliance or non-compliance, are material concerns to a  
3 consumer, including with respect to the emissions certification testing their vehicles  
4 must pass. Volkswagen represented to Plaintiff and North Dakota Subclass members  
5 that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
6 confirm this—except that, secretly, Volkswagen had subverted the testing process  
7 thoroughly.

8 1466. Volkswagen actively concealed and/or suppressed these material facts, in  
9 whole or in part, to pad and protect its profits and to avoid the perception that its  
10 vehicles did not or could not comply with federal and state laws governing clean air  
11 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
12 money, and it did so at the expense of Plaintiff and North Dakota Subclass members.

13 1467. On information and belief, Volkswagen has still not made full and  
14 adequate disclosures, and continues to defraud Plaintiff and North Dakota Subclass  
15 members by concealing material information regarding the emissions qualities of its  
16 vehicles and its emissions scheme.

17 1468. Plaintiff and North Dakota Subclass members were unaware of the  
18 omitted material facts referenced herein, and they would not have acted as they did if  
19 they had known of the concealed and/or suppressed facts, in that they would not have  
20 purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would  
21 not have continued to drive their heavily polluting vehicles, or would have taken other  
22 affirmative steps in light of the information concealed from them. Plaintiff’s and  
23 North Dakota Subclass Members’ actions were justified. Volkswagen was in  
24 exclusive control of the material facts, and such facts were not known to the public,  
25 Plaintiff, or North Dakota Subclass members.

26 1469. Because of the concealment and/or suppression of the facts, Plaintiff and  
27 North Dakota Subclass members have sustained damage because they own vehicles  
28



1 that are diminished in value as a result of Volkswagen's concealment of the true  
2 quality and quantity of those vehicles' emissions and Volkswagen's failure to timely  
3 disclose the actual emissions qualities and quantities of hundreds of thousands of  
4 Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
5 Volkswagen's corporate policies. Had Plaintiff and North Dakota Subclass members  
6 been aware of Volkswagen's emissions scheme, and the company's callous disregard  
7 for compliance with applicable federal and state laws and regulations, Plaintiff and  
8 North Dakota Subclass members who purchased or leased new or previously owned  
9 vehicles would have paid less for their vehicles or would not have purchased or leased  
10 them at all.

11 1470. The value of Plaintiff's and North Dakota Subclass Members' vehicles  
12 has diminished as a result of Volkswagen's fraudulent concealment of its emissions  
13 scheme, which has greatly tarnished the Volkswagen and Audi brand names attached  
14 to Plaintiff's and North Dakota Subclass members' vehicles and made any reasonable  
15 consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
16 otherwise would have been fair market value for the vehicles. In addition, Class  
17 members are entitled to damages for loss of use, costs of additional fuel, costs of  
18 unused warranties, and other damages to be proved at trial.

19 1471. Accordingly, Volkswagen is liable to Plaintiff and North Dakota Subclass  
20 members for damages in an amount to be proven at trial.

21 1472. Volkswagen's acts were done wantonly, maliciously, oppressively,  
22 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and North  
23 Dakota Subclass members' rights and the representations that Volkswagen made to  
24 them, in order to enrich Volkswagen. To the extent permitted under applicable law,  
25 Volkswagen's conduct warrants an assessment of punitive damages in an amount  
26 sufficient to deter such conduct in the future, which amount is to be determined  
27 according to proof.  
28

**COUNT III  
BREACH OF CONTRACT  
(BASED ON NORTH DAKOTA LAW)**

1473. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1474. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the North Dakota Subclass.

1475. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other North Dakota Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other North Dakota Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other North Dakota Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1476. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other North Dakota Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1477. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the North Dakota Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**KK. Claims Brought on Behalf of the Ohio Subclass**

**COUNT I  
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT  
(OHIO REV. CODE §§ 1345.01, *et seq.*)**

1478. Plaintiff David Pyle ("Plaintiff," for purposes of all Ohio Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1479. Plaintiff brings this Count on behalf of the Ohio Subclass.

1480. Plaintiff and the other Ohio Subclass members are "consumers" as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 ("OCSPA"). Volkswagen is a "supplier" as defined by the OCSPA. Plaintiff's and the other Ohio Subclass members' purchases or leases of Affected Vehicles were "consumer transactions" as defined by the OCSPA.

1481. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device" in the Affected Vehicles, Volkswagen engaged in deceptive business practices prohibited by the OCSPA, including (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

1482. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false

1 or misleading. Each of these statements contributed to the deceptive context of  
 2 Volkswagen's unlawful advertising and representations as a whole.

3 1483. Volkswagen knew that the CleanDiesel engine system in the Affected  
 4 Vehicles were defectively designed or manufactured, did not comply with EPA  
 5 regulations and the Clean Air Act, and were not suitable for their intended use.  
 6 Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a  
 7 duty to do so.

8 1484. Volkswagen owed Plaintiff a duty to disclose the defective nature of the  
 9 CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- 10 i) Possessed exclusive knowledge of the defects rendering the  
 Affected Vehicles more unreliable than similar vehicles;
- 11 ii) Intentionally concealed the use and installation of the "defeat  
 12 device" that Volkswagen that it designed to hide the defects in the  
 CleanDiesel engine system; and/or
- 13 iii) Made incomplete representations about the characteristics and  
 14 performance of the CleanDiesel engine system generally, while  
 purposefully withholding material facts from Plaintiff that  
 15 contradicted these representations.

16 1485. Volkswagen's unfair or deceptive acts or practices were likely to, and did  
 17 in fact, deceive reasonable consumers, including Plaintiff, about the true performance  
 18 and characteristics of the CleanDiesel engine system.

19 1486. The Ohio Attorney General has made available for public inspection prior  
 20 state court decisions which have held that the acts and omissions of Volkswagen in  
 21 this Complaint, including, but not limited to, the failure to honor both implied  
 22 warranties and express warranties, the making and distribution of false, deceptive,  
 23 and/or misleading representations, and the concealment and/or non-disclosure of a  
 24 dangerous defect, constitute deceptive sales practices in violation of the OCSPA.  
 These cases include, but are not limited to, the following:

- 25 a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- 26 b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.* (OPIF  
 27 #10002123);

- c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF #10002025);
- d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- e. *Borror v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
- f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);
- g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586);
- h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);
- i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- j. *Khoury v. Don Lewis* (OPIF #100001995);
- k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);
- l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524); and
- m. *Brown v. Spears* (OPIF #10000403).

1487. As a result of its violations of the OCSPA, as detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned or leased, an Affected Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles to decrease.

1488. Plaintiff and the Class sustained damages as a result of Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSPA.

1489. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violations of the OCSPA as provided in Ohio Rev. Code § 1345.09.

**COUNT II  
BREACH OF CONTRACT  
(BASED ON OHIO LAW)**

1490. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1491. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Ohio Subclass.

1492. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Ohio Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Ohio Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Ohio Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1493. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Ohio Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1494. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Ohio Subclass have been damaged in an amount to be proven at trial,

1 which shall include, but is not limited to, all compensatory damages, incidental and  
2 consequential damages, and other damages allowed by law.

3 **COUNT III**  
4 **FRAUDULENT CONCEALMENT**  
5 **(BASED ON OHIO LAW)**

6 1495. Plaintiff incorporates by reference all preceding allegations as though  
7 fully set forth herein.

8 1496. Plaintiff brings this Count on behalf of the Ohio Subclass.

9 1497. Volkswagen intentionally concealed that the CleanDiesel engine systems  
10 were not EPA-compliant and used a “defeat device,” or acted with reckless disregard  
11 for the truth, and denied Plaintiff and the other Class members’ information that is  
12 highly relevant to their purchasing decision.

13 1498. Volkswagen further affirmatively misrepresented to Plaintiff in  
14 advertising and other forms of communication, including standard and uniform  
15 material provided with each car, that the Affected Vehicles it was selling were new,  
16 had no significant defects, complied with EPA regulations and would perform and  
17 operate properly when driven in normal usage.

18 1499. Volkswagen knew these representations were false when made.

19 1500. The Affected Vehicles purchased or leased by Plaintiff and the other  
20 Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable  
21 because the Affected Vehicles contained the faulty and defective CleanDiesel engine  
22 system, as alleged herein.

23 1501. Volkswagen had a duty to disclose that these Affected Vehicles were  
24 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions  
25 functions of the Affected Vehicles would be rendered inoperative due to the “defeat  
26 device” installed in the defective CleanDiesel engine system, because Plaintiff and the  
27 other Class members relied on Volkswagen’s material representations that the  
28



1 Affected Vehicles they were purchasing were safe, environmentally clean, efficient  
2 and free from defects.

3 1502. The aforementioned concealment was material because if it had been  
4 disclosed Plaintiff and the other Class members would not have bought or leased the  
5 Affected Vehicles, or would not have bought or leased those Vehicles at the prices  
6 they paid.

7 1503. The aforementioned representations were material because they were  
8 facts that would typically be relied on by a person purchasing or leasing a new motor  
9 vehicle. Volkswagen knew or recklessly disregarded that its representations were  
10 false because it knew that it had to use the “defeat device” in order for Affected  
11 Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the  
12 false statements in order to sell Affected Vehicles.

13 1504. Plaintiff and the other Class members relied on Volkswagen’s reputation  
14 – along with Volkswagen’s failure to disclose the faulty and defective nature of the  
15 CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected  
16 Vehicles were safe and reliable, and other similar false statements – in purchasing or  
17 leasing Volkswagen’s Affected Vehicles.

18 1505. As a result of their reliance, Plaintiff and the other Class members have  
19 been injured in an amount to be proven at trial, including, but not limited to, their lost  
20 benefit of the bargain and overpayment at the time of purchase or lease and/or the  
21 diminished value of their Affected Vehicles.

22 1506. Volkswagen’s conduct was knowing, intentional, with malice,  
23 demonstrated a complete lack of care, and was in reckless disregard for the rights of  
24 Plaintiff and the other Class members. Plaintiff and the other Class members are  
25 therefore entitled to an award of punitive damages.  
26  
27  
28

**LL. Claims Brought on Behalf of the Oklahoma Subclass**

**COUNT I  
VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT  
(OKLA. STAT. TIT. 15 § 751, *ET SEQ.*)**

1507. Plaintiff Heather Greenfield (“Plaintiff,” for purposes of all Oklahoma Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1508. This claim is brought on behalf of the Oklahoma Subclass.

1509. Plaintiff and the Oklahoma Subclass Members are “persons” under the Oklahoma Consumer Protection Act (“Oklahoma CPA”), OKLA. STAT. TIT. 15 § 752.

1510. Volkswagen is a “person,” “corporation,” or “association” within the meaning of OKLA. STAT. TIT. 15 § 15-751(1).

1511. The sale or lease of the Affected Vehicles to the Oklahoma Subclass Members was a “consumer transaction” within the meaning of OKLA. STAT. TIT. 15 § 752, and Volkswagen’s actions as set forth herein occurred in the conduct of trade or commerce.

1512. The Oklahoma CPA declares unlawful, *inter alia*, the following acts or practices when committed in the course of business: “mak[ing] a false or misleading representation, knowingly or with reason to know, as to the characteristics ..., uses, [or] benefits, of the subject of a consumer transaction,” or making a false representation, “knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or “[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;” and otherwise committing “an unfair or deceptive trade practice.” *See* OKLA. STAT. TIT. 15, § 753.

1513. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in unfair and deceptive business practices prohibited by the Oklahoma CPA, including:

1 representing that Affected Vehicles have characteristics, uses, benefits, and qualities  
2 which they do not have; representing that Affected Vehicles are of a particular  
3 standard, quality, and grade when they are not; and advertising Affected Vehicles with  
4 the intent not to sell or lease them as advertised; misrepresenting, omitting and  
5 engaging in other practices that have deceived or could reasonably be expected to  
6 deceive or mislead; and engaging in practices which offend established public policy  
7 or are immoral, unethical, oppressive, unscrupulous or substantially injurious to  
8 consumers.

9 1514. In the course of its business, Volkswagen installed the “defeat device”  
10 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
11 and otherwise engaged in activities with a tendency or capacity to deceive.  
12 Volkswagen also engaged in unlawful trade practices by employing deception,  
13 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
14 omission of any material fact with intent that others rely upon such concealment,  
15 suppression or omission, in connection with the sale of Affected Vehicles.

16 1515. Volkswagen has known of its use of the “defeat device” and the true  
17 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
18 information until recently.

19 1516. Volkswagen was also aware that it valued profits over environmental  
20 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
21 distributing vehicles throughout the United States that did not comply with EPA  
22 regulations. Volkswagen concealed this information as well.

23 1517. By failing to disclose and by actively concealing the “defeat device” and  
24 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
25 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
26 by presenting itself as a reputable manufacturer that valued safety, environmental  
27  
28

1 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
2 Volkswagen engaged in deceptive trade practices in violation of the Oklahoma CPA.

3 1518. In the course of Volkswagen's business, it willfully failed to disclose and  
4 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
5 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
6 compounded the deception by repeatedly asserting that the Affected Vehicles were  
7 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
8 be a reputable manufacturer that valued safety, environmental cleanliness and  
9 efficiency, and stood behind its vehicles once they are on the road.

10 1519. Volkswagen's unfair or deceptive acts or practices were likely to and did  
11 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
12 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
13 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
14 and the true value of the Affected Vehicles.

15 1520. Volkswagen intentionally and knowingly misrepresented material facts  
16 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Oklahoma  
17 Subclass.

18 1521. Volkswagen knew or should have known that its conduct violated the  
19 Oklahoma CPA.

20 1522. As alleged above, Volkswagen made material statements about the safety,  
21 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
22 and Audi brands that were either false or misleading.

23 1523. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness,  
24 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
25 cleanliness and integrity at Volkswagen, because Volkswagen:

- 26 a. Possessed exclusive knowledge that it valued profits  
27 over environmental cleanliness, efficiency, and  
28 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiff; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1524. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1525. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Oklahoma Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1526. Plaintiff and the Oklahoma Class suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information.

1527. Volkswagen’s unlawful acts and practices complained of herein affect the public interest.

1528. As a direct and proximate result of Volkswagen’s violations of the Oklahoma CPA, Plaintiff and the Oklahoma Class have suffered injury-in-fact and/or actual damage.

1529. Volkswagen's conduct as alleged herein was unconscionable because (1) Volkswagen, knowingly or with reason to know, took advantage of consumers reasonably unable to protect their interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) at the time the consumer transaction was entered into, Volkswagen knew or had reason to know that price grossly exceeded the price at which similar vehicles were readily obtainable in similar transactions by like consumers; and (3) Volkswagen knew or had reason to know that the transaction Volkswagen induced the consumer to enter into was excessively one-sided in favor of Volkswagen.

1530. Because Volkswagen's unconscionable conduct caused injury to Oklahoma Subclass Members, the Oklahoma Subclass seeks recovery of actual damages, discretionary penalties up to \$2,000 per violation, punitive damages, and reasonable attorneys' fees, under OKLA. STAT. TIT. 15 § 761.1. The Oklahoma Subclass further seeks an order enjoining Volkswagen's unfair and/or deceptive acts or practices, and any other just and proper relief available under the Oklahoma CPA.

## COUNT II FRAUD BY CONCEALMENT

1531. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1532. This claim is brought on behalf of the Oklahoma Subclass.

1533. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification

1 testing, such that the vehicles would show far lower emissions than when actually  
2 operating on the road. The result was what Volkswagen intended: vehicles passed  
3 emissions certifications by way of deliberately induced false readings. Reportedly,  
4 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
5 vehicles up to 40 times applicable standards.

6 1534. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
7 representations. They had no way of knowing that Volkswagen's representations were  
8 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
9 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
10 not, unravel Volkswagen's deception on their own.

11 1535. Volkswagen concealed and suppressed material facts concerning what is  
12 evidently the true culture of Volkswagen—one characterized by an emphasis on  
13 profits and sales above compliance with federal and state clean air laws, and emissions  
14 regulations that are meant to protect the public and consumers. It also emphasized  
15 profits and sales over the trust that Plaintiffs and Class members placed in its  
16 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
17 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
18 intentional manipulation of the system. That's just a whole other level of not only  
19 lying to the government, but also lying to your consumer. People buy diesel cars from  
20 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
21 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
22 want to be spewing noxious gases into the environment."

23 1536. Necessarily, Volkswagen also took steps to ensure that its employees did  
24 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
25 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
26 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
27 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
28



1 law, including federal and state clean air laws and emissions regulations, and that its  
2 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
3 representations were material to consumers, both because they concerned the quality  
4 of the Affected Vehicles, including their compliance with applicable federal and state  
5 laws and regulations regarding clean air and emissions, and also because the  
6 representations played a significant role in the value of the vehicles. As Volkswagen  
7 well knew, its customers, including Plaintiffs and Class members, highly valued that  
8 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
9 accordingly.

10 1537. Volkswagen had a duty to disclose its emissions scheme because  
11 knowledge of the scheme and its details were known and/or accessible only to  
12 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
13 maintenance of its scheme, and because Volkswagen knew the facts were not known  
14 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
15 duty to disclose because it made general affirmative representations about the qualities  
16 of its vehicles with respect to emissions standards, starting with references to them as  
17 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
18 and incomplete without the disclosure of the additional facts set forth above regarding  
19 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
20 respect to compliance with federal and state clean air laws and emissions regulations,  
21 and its actual practices with respect to the vehicles at issue. Having volunteered to  
22 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
23 partial truth, but the entire truth. These omitted and concealed facts were material  
24 because they directly impact the value of the Affected Vehicles purchased or leased by  
25 Plaintiffs and Class members. Whether a manufacturer's products comply with  
26 federal and state clean air laws and emissions regulations, and whether that  
27 manufacturer tells the truth with respect to such compliance or non-compliance, are  
28

1 material concerns to a consumer, including with respect to the emissions certification  
2 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
3 members that they were purchasing *clean* diesel vehicles, and certification testing  
4 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
5 process thoroughly.

6 1538. Volkswagen actively concealed and/or suppressed these material facts, in  
7 whole or in part, to pad and protect its profits and to avoid the perception that its  
8 vehicles did not or could not comply with federal and state laws governing clean air  
9 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
10 money, and it did so at the expense of Plaintiffs and Class members.

11 1539. On information and belief, Volkswagen has still not made full and  
12 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
13 concealing material information regarding the emissions qualities of its vehicles and  
14 its emissions scheme.

15 1540. Plaintiffs and Class members were unaware of the omitted material facts  
16 referenced herein, and they would not have acted as they did if they had known of the  
17 concealed and/or suppressed facts, in that they would not have purchased purportedly  
18 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
19 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
20 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
21 were justified. Volkswagen was in exclusive control of the material facts, and such  
22 facts were not known to the public, Plaintiffs, or Class members.

23 1541. Because of the concealment and/or suppression of the facts, Plaintiffs and  
24 Class members have sustained damage because they own vehicles that are diminished  
25 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
26 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
27 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
28

1 branded vehicles and the serious issues engendered by Volkswagen's corporate  
2 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
3 scheme, and the company's callous disregard for compliance with applicable federal  
4 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
5 new or previously owned vehicles would have paid less for their vehicles or would not  
6 have purchased or leased them at all.

7 1542. The value of Plaintiffs' and Class Members' vehicles has diminished as a  
8 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
9 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
10 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
11 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
12 value for the vehicles. In addition, Class members are entitled to damages for loss of  
13 use, costs of additional fuel, costs of unused warranties, and other damages to be  
14 proved at trial.

15 1543. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
16 damages in an amount to be proven at trial.

17 1544. Volkswagen's acts were done wantonly, maliciously, oppressively,  
18 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
19 members' rights and the representations that Volkswagen made to them, in order to  
20 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
21 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
22 such conduct in the future, which amount is to be determined according to proof.

23 **COUNT III**  
24 **BREACH OF CONTRACT**  
**(BASED ON OKLAHOMA LAW)**

25 1545. Plaintiff incorporates by reference all preceding allegations as though  
26 fully set forth herein.  
27  
28

1           1546. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
2 owned vehicle purchasers in the Oklahoma Subclass.

3           1547. Volkswagen's misrepresentations and omissions alleged herein, including  
4 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
5 defect and/or defective design as alleged herein, caused Plaintiff and the other  
6 Oklahoma Subclass members to make their purchases or leases of their Affected  
7 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
8 Oklahoma Subclass members would not have purchased or leased these Affected  
9 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
10 they paid, and/or would have purchased or leased less expensive alternative vehicles  
11 that did not contain the CleanDiesel engine system and which were not marketed as  
12 including such a system. Accordingly, Plaintiff and the other Oklahoma Subclass  
13 members overpaid for their Affected Vehicles and did not receive the benefit of their  
14 bargain.

15           1548. Each and every sale or lease of an Affected Vehicle by an authorized  
16 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
17 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
18 other Oklahoma Subclass members defective Affected Vehicles and by  
19 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
20 defect and/or defective design, including information known to Volkswagen rendering  
21 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
22 equipped with a CleanDiesel engine system.

23           1549. As a direct and proximate result of Volkswagen's breach of contract,  
24 Plaintiff and the Oklahoma Subclass have been damaged in an amount to be proven at  
25 trial, which shall include, but is not limited to, all compensatory damages, incidental  
26 and consequential damages, and other damages allowed by law.

1 **MM. Claims Brought on Behalf of the Oregon Subclass**

2 **COUNT I**  
 3 **VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT**  
 4 **(OR. REV. STAT. §§ 646.605, *et seq.*)**

5 1550. Plaintiff Kyle Boylan (“Plaintiff,” for purposes of all Oregon Subclass  
 6 Counts) incorporates by reference all preceding allegations as though fully set forth  
 7 herein.

8 1551. This claim is brought only on behalf of the Oregon Subclass.

9 1552. Volkswagen is a person within the meaning of OR. REV. STAT.  
 10 § 646.605(4).

11 1553. The Affected Vehicles at issue are “goods” obtained primarily for  
 12 personal family or household purposes within the meaning of OR. REV. STAT.  
 13 § 646.605(6).

14 1554. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits a  
 15 person from, in the course of the person’s business, doing any of the following:  
 16 “(e) Represent[ing] that ... goods ... have ... characteristics ... uses, benefits, ... or  
 17 qualities that they do not have; (g) Represent[ing] that ... goods ... are of a particular  
 18 standard [or] quality ... if they are of another; (i) Advertis[ing] ... goods or services  
 19 with intent not to provide them as advertised;” and “(u) engag[ing] in any other unfair  
 20 or deceptive conduct in trade or commerce.” OR. REV. STAT. § 646.608(1).

21 1555. Volkswagen engaged in unlawful trade practices, including representing  
 22 that Affected Vehicles have characteristics, uses, benefits, and qualities which they do  
 23 not have; representing that Affected Vehicles are of a particular standard and quality  
 24 when they are not; advertising Affected Vehicles with the intent not to sell them as  
 25 advertised; and engaging in other unfair or deceptive acts.

26 1556. Volkswagen also engaged in unlawful trade practices by employing  
 27 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
 28 suppression or omission of any material fact with intent that others rely upon such

1 concealment, suppression or omission, in connection with the sale of Affected  
2 Vehicles.

3 1557. Volkswagen's actions as set forth above occurred in the conduct of trade  
4 or commerce.

5 1558. Volkswagen has known of its use of the "defeat device" and the true  
6 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
7 information until recently.

8 1559. Volkswagen was also aware that it valued profits over environmental  
9 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
10 distributing vehicles throughout the United States that did not comply with EPA  
11 regulations. Volkswagen concealed this information as well.

12 1560. By failing to disclose and by actively concealing the "defeat device" and  
13 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
14 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
15 by presenting itself as a reputable manufacturer that valued safety, environmental  
16 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
17 Volkswagen engaged in deceptive business practices in violation of the Oregon  
18 UTPA.

19 1561. In the course of Volkswagen's business, it willfully failed to disclose and  
20 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
21 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
22 compounded the deception by repeatedly asserting that the Affected Vehicles were  
23 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
24 be a reputable manufacturer that valued safety, environmental cleanliness and  
25 efficiency, and stood behind its vehicles once they are on the road.

26 1562. Volkswagen's unfair or deceptive acts or practices were likely to and did  
27 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
28

1 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 2 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 3 and the true value of the Affected Vehicles.

4 1563. Volkswagen intentionally and knowingly misrepresented material facts  
 5 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Oregon  
 6 Subclass.

7 1564. Volkswagen knew or should have known that its conduct violated the  
 8 Oregon UTPA.

9 1565. As alleged above, Volkswagen made material statements about the safety,  
 10 cleanliness, efficiency and reliability of the Affected Vehicles that were either false or  
 11 misleading.

12 1566. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness,  
 13 efficiency and reliability of the Affected Vehicles, and the devaluing of environmental  
 14 cleanliness and integrity at Volkswagen, because Volkswagen:

- 15 a. Possessed exclusive knowledge that it valued profits  
 16 over environmental cleanliness, efficiency, and  
 17 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 18 b. Intentionally concealed the foregoing from Plaintiff;  
 19 and/or
- 20 c. Made incomplete representations about the safety,  
 21 cleanliness, efficiency and reliability of the Affected  
 22 Vehicles generally, and the use of the “defeat device”  
 and true nature of the CleanDiesel engine system in  
 23 particular, while purposefully withholding material  
 facts from Plaintiffs that contradicted these  
 representations.

24 1567. Because Volkswagen fraudulently concealed the “defeat device” and the  
 25 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
 26 of negative publicity once the use of the “defeat device” and true characteristics of the  
 27 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
 28 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by



1 Volkswagen's conduct, they are now worth significantly less than they otherwise  
2 would be.

3 1568. Volkswagen's fraudulent use of the "defeat device" and its concealment  
4 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
5 and the Oregon Subclass. A vehicle made by a reputable manufacturer of  
6 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
7 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
8 the amount its cars pollutes rather than make environmentally friendly vehicles.

9 1569. Plaintiff and the Oregon Subclass suffered ascertainable loss caused by  
10 Volkswagen's misrepresentations and its concealment of and failure to disclose  
11 material information.

12 1570. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
13 to refrain from unfair and deceptive acts or practices under the Oregon UTPA. All  
14 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
15 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
16 practices that occurred in the course of Volkswagen's business.

17 1571. Volkswagen's violations present a continuing risk to Plaintiff as well as  
18 to the general public. Volkswagen's unlawful acts and practices complained of herein  
19 affect the public interest.

20 1572. As a direct and proximate result of Volkswagen's violations of the  
21 Oregon UTPA, Plaintiff and the Oregon Subclass have suffered injury-in-fact and/or  
22 actual damage.

23 1573. Plaintiff and the Oregon Subclass are entitled to recover the greater of  
24 actual damages or \$200 pursuant to OR. REV. STAT. § 646.638(1). Plaintiff and the  
25 Oregon Subclass are also entitled to punitive damages because Volkswagen engaged  
26 in conduct amounting to a particularly aggravated, deliberate disregard of the rights of  
27 others.

**COUNT II**  
**FRAUD BY CONCEALMENT**

1574. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

1575. This claim is brought on behalf of the Oregon Subclass.

1576. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1577. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1578. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its

1 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
2 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
3 intentional manipulation of the system. That’s just a whole other level of not only  
4 lying to the government, but also lying to your consumer. People buy diesel cars from  
5 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
6 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
7 want to be spewing noxious gases into the environment.”

8 1579. Necessarily, Volkswagen also took steps to ensure that its employees did  
9 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
10 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
11 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
12 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
13 law, including federal and state clean air laws and emissions regulations, and that its  
14 vehicles likewise comply with applicable laws and regulations. Volkswagen’s false  
15 representations were material to consumers, both because they concerned the quality  
16 of the Affected Vehicles, including their compliance with applicable federal and state  
17 laws and regulations regarding clean air and emissions, and also because the  
18 representations played a significant role in the value of the vehicles. As Volkswagen  
19 well knew, its customers, including Plaintiffs and Class members, highly valued that  
20 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
21 accordingly.

22 1580. Volkswagen had a duty to disclose its emissions scheme because  
23 knowledge of the scheme and its details were known and/or accessible only to  
24 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
25 maintenance of its scheme, and because Volkswagen knew the facts were not known  
26 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
27 duty to disclose because it made general affirmative representations about the qualities  
28

1 of its vehicles with respect to emissions standards, starting with references to them as  
2 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
3 and incomplete without the disclosure of the additional facts set forth above regarding  
4 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
5 respect to compliance with federal and state clean air laws and emissions regulations,  
6 and its actual practices with respect to the vehicles at issue. Having volunteered to  
7 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
8 partial truth, but the entire truth. These omitted and concealed facts were material  
9 because they directly impact the value of the Affected Vehicles purchased or leased by  
10 Plaintiffs and Class members. Whether a manufacturer's products comply with  
11 federal and state clean air laws and emissions regulations, and whether that  
12 manufacturer tells the truth with respect to such compliance or non-compliance, are  
13 material concerns to a consumer, including with respect to the emissions certification  
14 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
15 members that they were purchasing *clean* diesel vehicles, and certification testing  
16 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
17 process thoroughly.

18 1581. Volkswagen actively concealed and/or suppressed these material facts, in  
19 whole or in part, to pad and protect its profits and to avoid the perception that its  
20 vehicles did not or could not comply with federal and state laws governing clean air  
21 and emissions, which perception would hurt the brand's image and cost Volkswagen  
22 money, and it did so at the expense of Plaintiffs and Class members.

23 1582. On information and belief, Volkswagen has still not made full and  
24 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
25 concealing material information regarding the emission qualities of its vehicles and its  
26 emissions scheme.

1           1583. Plaintiffs and Class members were unaware of the omitted material facts  
2 referenced herein, and they would not have acted as they did if they had known of the  
3 concealed and/or suppressed facts, in that they would not have purchased purportedly  
4 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
5 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
6 light of the information concealed from them. Plaintiffs’ and Class members’ actions  
7 were justified. Volkswagen was in exclusive control of the material facts, and such  
8 facts were not known to the public, Plaintiffs, or Class members.

9           1584. Because of the concealment and/or suppression of the facts, Plaintiffs and  
10 Class members have sustained damage because they own vehicles that are diminished  
11 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
12 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
13 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
14 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
15 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
16 scheme, and the company’s callous disregard for compliance with applicable federal  
17 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
18 new or previously owned vehicles would have paid less for their vehicles or would not  
19 have purchased or leased them at all.

20           1585. The value of Plaintiffs’ and Class members’ vehicles has diminished as a  
21 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
22 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
23 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
24 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
25 value for the vehicles. In addition, Class members are entitled to damages for loss of  
26 use, costs of additional fuel, costs of unused warranties, and other damages to be  
27 proved at trial.  
28



1 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 2 other Oregon Subclass members defective Affected Vehicles and by misrepresenting  
 3 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 4 defective design, including information known to Volkswagen, rendering each  
 5 Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not  
 6 equipped with a CleanDiesel engine system.

7 1592. As a direct and proximate result of Volkswagen's breach of contract,  
 8 Plaintiff and the Oregon Subclass have been damaged in an amount to be proven at  
 9 trial, which shall include, but is not limited to, all compensatory damages, incidental  
 10 and consequential damages, and other damages allowed by law.

11 **NN. Claims Brought on Behalf of the Pennsylvania Subclass**

12 **COUNT I**  
 13 **VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES**  
 14 **AND CONSUMER PROTECTION LAW**  
 15 **(73 P.S. § 201-1, et seq.)**

16 1593. Plaintiff Ralph Mendenhall ("Plaintiff," for purposes of all Pennsylvania  
 17 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 18 set forth herein.

19 1594. This claim is brought only on behalf of the Pennsylvania Subclass.

20 1595. Plaintiffs purchased or leased their Affected Vehicles primarily for  
 21 personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

22 1596. All of the acts complained of herein were perpetrated by Volkswagen in  
 23 the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

24 1597. The Pennsylvania Unfair Trade Practices and Consumer Protection Law  
 25 ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i)  
 26 "Representing that goods or services have ... characteristics, .... Benefits or qualities  
 27 that they do not have;" (ii) "Representing that goods or services are of a particular  
 28 standard, quality or grade ... if they are of another;" (iii) "Advertising goods or  
 services with intent not to sell them as advertised;" and (iv) "Engaging in any other



1 fraudulent or deceptive conduct which creates a likelihood of confusion or  
2 misunderstanding.” 73 P.S. § 201-2(4).

3 1598. Volkswagen engaged in unlawful trade practices, including representing  
4 that Affected Vehicles have characteristics, uses, benefits, and qualities which they do  
5 not have; representing that Affected Vehicles are of a particular standard and quality  
6 when they are not; advertising Affected Vehicles with the intent not to sell them as  
7 advertised; and engaging in any other fraudulent or deceptive conduct which creates a  
8 likelihood of confusion or of misunderstanding.

9 1599. In the course of its business, Volkswagen installed the “defeat device”  
10 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
11 and otherwise engaged in activities with a tendency or capacity to deceive.  
12 Volkswagen also engaged in unlawful trade practices by employing deception,  
13 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
14 omission of any material fact with intent that others rely upon such concealment,  
15 suppression or omission, in connection with the sale of Affected Vehicles.

16 1600. Volkswagen has known of its use of the “defeat device” and the true  
17 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
18 information until recently.

19 1601. Volkswagen was also aware that it valued profits over environmental  
20 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
21 distributing vehicles throughout the United States that did not comply with EPA  
22 regulations. Volkswagen concealed this information as well.

23 1602. By failing to disclose and by actively concealing the “defeat device” and  
24 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
25 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
26 by presenting itself as a reputable manufacturer that valued safety, environmental  
27 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
28

1 Volkswagen engaged in unfair and deceptive business practices in violation of the  
2 Pennsylvania CPL.

3 1603. In the course of Volkswagen's business, it willfully failed to disclose and  
4 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
5 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
6 compounded the deception by repeatedly asserting that the Affected Vehicles were  
7 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
8 be a reputable manufacturer that valued safety, environmental cleanliness and  
9 efficiency, and stood behind its vehicles once they are on the road.

10 1604. Volkswagen's unfair or deceptive acts or practices were likely to and did  
11 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
12 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
13 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
14 and the true value of the Affected Vehicles.

15 1605. Volkswagen intentionally and knowingly misrepresented material facts  
16 regarding the Affected Vehicles with an intent to mislead Plaintiff and the  
17 Pennsylvania Subclass.

18 1606. Volkswagen knew or should have known that its conduct violated the  
19 Pennsylvania CPL.

20 1607. As alleged above, Volkswagen made material statements about the safety,  
21 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
22 and Audi brands that were either false or misleading.

23 1608. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
24 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
25 cleanliness and integrity at Volkswagen, because Volkswagen:

- 26 a. Possessed exclusive knowledge that it valued profits  
27 over environmental cleanliness, efficiency, and  
28 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1609. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1610. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Pennsylvania Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1611. Plaintiffs and the Pennsylvania Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information.

1612. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Pennsylvania CPL. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of Volkswagen’s business.

1           1613. Volkswagen's violations present a continuing risk to Plaintiffs as well as  
2 to the general public. Volkswagen's unlawful acts and practices complained of herein  
3 affect the public interest.

4           1614. As a direct and proximate result of Volkswagen's violations of the  
5 Pennsylvania CPL, Plaintiffs and the Pennsylvania Subclass have suffered injury-in-  
6 fact and/or actual damage.

7           1615. Volkswagen is liable to Plaintiffs and the Pennsylvania Subclass for  
8 treble their actual damages or \$100, whichever is greater, and attorneys' fees and  
9 costs. 73 P.S. § 201-9.2(a). Plaintiffs and the Pennsylvania Subclass are also entitled  
10 to an award of punitive damages given that Volkswagen's conduct was malicious,  
11 wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

12                           **COUNT II**  
13                           **FRAUD BY CONCEALMENT**

14           1616. Plaintiff realleges and incorporates by reference all paragraphs as though  
15 fully set forth herein.

16           1617. This claim is brought on behalf of the Pennsylvania Subclass.

17           1618. Volkswagen intentionally concealed and suppressed material facts  
18 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
19 notwithstanding references in the very model names of the subject vehicles as "Clean  
20 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
21 secret scheme to evade federal and state vehicle emissions standards by installing  
22 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
23 which contributes to the creation of ozone and smog. The software installed on the  
24 vehicles at issue was designed nefariously to kick-in during emissions certification  
25 testing, such that the vehicles would show far lower emissions than when actually  
26 operating on the road. The result was what Volkswagen intended: vehicles passed  
27 emissions certifications by way of deliberately induced false readings. Reportedly,  
28

1 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
2 vehicles at up to 40 times applicable standards.

3 1619. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
4 representations. They had no way of knowing that Volkswagen's representations were  
5 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
6 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
7 not, unravel Volkswagen's deception on their own.

8 1620. Volkswagen concealed and suppressed material facts concerning what is  
9 evidently the true culture of Volkswagen—one characterized by an emphasis on  
10 profits and sales above compliance with federal and state clean air laws, and emissions  
11 regulations that are meant to protect the public and consumers. It also emphasized  
12 profits and sales over the trust that Plaintiffs and Class members placed in its  
13 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
14 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
15 intentional manipulation of the system. That's just a whole other level of not only  
16 lying to the government, but also lying to your consumer. People buy diesel cars from  
17 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
18 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
19 want to be spewing noxious gases into the environment."

20 1621. Necessarily, Volkswagen also took steps to ensure that its employees did  
21 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
22 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
23 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
24 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
25 law, including federal and state clean air laws and emissions regulations, and that its  
26 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
27 representations were material to consumers, both because they concerned the quality  
28

1 of the Affected Vehicles, including their compliance with applicable federal and state  
2 laws and regulations regarding clean air and emissions, and also because the  
3 representations played a significant role in the value of the vehicles. As Volkswagen  
4 well knew, its customers, including Plaintiffs and Class members, highly valued that  
5 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
6 accordingly.

7 1622. Volkswagen had a duty to disclose its emissions scheme because  
8 knowledge of the scheme and its details were known and/or accessible only to  
9 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
10 maintenance of its scheme, and because Volkswagen knew the facts were not known  
11 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
12 duty to disclose because it made general affirmative representations about the qualities  
13 of its vehicles with respect to emissions standards, starting with references to them as  
14 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
15 and incomplete without the disclosure of the additional facts set forth above regarding  
16 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
17 respect to compliance with federal and state clean air laws and emissions regulations,  
18 and its actual practices with respect to the vehicles at issue. Having volunteered to  
19 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
20 partial truth, but the entire truth. These omitted and concealed facts were material  
21 because they directly impact the value of the Affected Vehicles purchased or leased by  
22 Plaintiffs and Class members. Whether a manufacturer's products comply with  
23 federal and state clean air laws and emissions regulations, and whether that  
24 manufacturer tells the truth with respect to such compliance or non-compliance, are  
25 material concerns to a consumer, including with respect to the emissions certification  
26 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
27 members that they were purchasing *clean* diesel vehicles, and certification testing  
28

1 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
2 process thoroughly.

3 1623. Volkswagen actively concealed and/or suppressed these material facts, in  
4 whole or in part, to pad and protect its profits and to avoid the perception that its  
5 vehicles did not or could not comply with federal and state laws governing clean air  
6 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
7 money, and it did so at the expense of Plaintiffs and Class members.

8 1624. On information and belief, Volkswagen has still not made full and  
9 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
10 concealing material information regarding the emission qualities of its vehicles and its  
11 emissions scheme.

12 1625. Plaintiffs and Class members were unaware of the omitted material facts  
13 referenced herein, and they would not have acted as they did if they had known of the  
14 concealed and/or suppressed facts, in that they would not have purchased purportedly  
15 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
16 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
17 light of the information concealed from them. Plaintiffs’ and Class members’ actions  
18 were justified. Volkswagen was in exclusive control of the material facts, and such  
19 facts were not known to the public, Plaintiffs, or Class members.

20 1626. Because of the concealment and/or suppression of the facts, Plaintiffs and  
21 Class members have sustained damage because they own vehicles that are diminished  
22 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
23 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
24 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
25 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
26 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
27 scheme, and the company’s callous disregard for compliance with applicable federal  
28



1 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
2 new or previously owned vehicles would have paid less for their vehicles or would not  
3 have purchased or leased them at all.

4 1627. The value of Plaintiffs' and Class members' vehicles has diminished as a  
5 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
6 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
7 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
8 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
9 value for the vehicles. In addition, Class members are entitled to damages for loss of  
10 use, costs of additional fuel, costs of unused warranties, and other damages to be  
11 proved at trial.

12 1628. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
13 damages in an amount to be proven at trial.

14 1629. Volkswagen's acts were done wantonly, maliciously, oppressively,  
15 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
16 members' rights and the representations that Volkswagen made to them, in order to  
17 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
18 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
19 such conduct in the future, which amount is to be determined according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON PENNSYLVANIA LAW)**

22 1630. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 1631. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the Pennsylvania Subclass.

26 1632. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28

1 defect and/or defective design as alleged herein, caused Plaintiff and the other  
2 Pennsylvania Subclass members to make their purchases or leases of their Affected  
3 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
4 Pennsylvania Subclass members would not have purchased or leased these Affected  
5 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
6 they paid, and/or would have purchased or leased less expensive alternative vehicles  
7 that did not contain the CleanDiesel engine system and which were not marketed as  
8 including such a system. Accordingly, Plaintiff and the other Pennsylvania Subclass  
9 members overpaid for their Affected Vehicles and did not receive the benefit of their  
10 bargain.

11 1633. Each and every sale or lease of an Affected Vehicle by an authorized  
12 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
13 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
14 other Pennsylvania Subclass members defective Affected Vehicles and by  
15 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
16 defect and/or defective design, including information known to Volkswagen rendering  
17 each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not  
18 equipped with a CleanDiesel engine system.

19 1634. As a direct and proximate result of Volkswagen's breach of contract,  
20 Plaintiff and the Pennsylvania Subclass have been damaged in an amount to be proven  
21 at trial, which shall include, but is not limited to, all compensatory damages, incidental  
22 and consequential damages, and other damages allowed by law.  
23  
24  
25  
26  
27  
28

**OO. Claims Brought on Behalf of the Rhode Island Subclass**

**COUNT I  
VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION ACT  
(R.I. GEN. LAWS § 6-13.1, *ET SEQ.*)**

1635. Plaintiff Alexander Baittinger (“Plaintiff,” for purposes of all Rhode Island Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1636. This claim is brought on behalf of the Rhode Island Subclass.

1637. Plaintiffs are persons who purchased or leased one or more Affected Vehicles primarily for personal, family, or household purposes within the meaning of R.I. GEN. LAWS § 6-13.1-5.2(a).

1638. Rhode Island’s Unfair Trade Practices and Consumer Protection Act (“Rhode Island CPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce” including: “(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have”; “(vii) Representing that goods or services are of a particular standard, quality, or grade ..., if they are of another”; “(ix) Advertising goods or services with intent not to sell them as advertised”; “(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding”; “(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer”; and “(xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect.” R.I. GEN. LAWS § 6-13.1-1(6).

1639. Volkswagen engaged in unlawful trade practices, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct that is unfair or deceptive and likely to deceive.

1           1640. Volkswagen's actions as set forth above occurred in the conduct of trade  
2 or commerce.

3           1641. In the course of its business, Volkswagen installed the "defeat device"  
4 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
5 and otherwise engaged in activities with a tendency or capacity to deceive.  
6 Volkswagen also engaged in unlawful trade practices by employing deception,  
7 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
8 omission of any material fact with intent that others rely upon such concealment,  
9 suppression or omission, in connection with the sale of Affected Vehicles.

10           1642. Volkswagen has known of its use of the "defeat device" and the true  
11 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
12 information until recently.

13           1643. Volkswagen was also aware that it valued profits over environmental  
14 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
15 distributing vehicles throughout the United States that did not comply with EPA  
16 regulations. Volkswagen concealed this information as well.

17           1644. By failing to disclose and by actively concealing the "defeat device" and  
18 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
19 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
20 by presenting itself as a reputable manufacturer that valued safety, environmental  
21 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
22 Volkswagen engaged in unfair and deceptive business practices in violation of the  
23 Rhode Island CPA.

24           1645. In the course of Volkswagen's business, it willfully failed to disclose and  
25 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
26 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
27 compounded the deception by repeatedly asserting that the Affected Vehicles were  
28

1 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
 2 be a reputable manufacturer that valued safety, environmental cleanliness and  
 3 efficiency, and stood behind its vehicles once they are on the road.

4 1646. Volkswagen's unfair or deceptive acts or practices were likely to and did  
 5 in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness  
 6 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 7 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 8 and the true value of the Affected Vehicles.

9 1647. Volkswagen intentionally and knowingly misrepresented material facts  
 10 regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Rhode  
 11 Island Class.

12 1648. Volkswagen knew or should have known that its conduct violated the  
 13 Rhode Island CPA.

14 1649. As alleged above, Volkswagen made material statements about the safety,  
 15 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
 16 and Audi brands that were either false or misleading.

17 1650. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 18 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 19 cleanliness and integrity at Volkswagen, because Volkswagen:

- 20 a. Possessed exclusive knowledge that it valued profits  
 21 over environmental cleanliness, efficiency, and  
 22 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 23 b. Intentionally concealed the foregoing from Plaintiffs;  
 24 and/or
- 25 c. Made incomplete representations about the safety,  
 26 cleanliness, efficiency and reliability of the Affected  
 27 Vehicles generally, and the use of the "defeat device"  
 and true nature of the CleanDiesel engine system in  
 28 particular, while purposefully withholding material  
 facts from Plaintiffs that contradicted these  
 representations.

1           1651. Because Volkswagen fraudulently concealed the “defeat device” and the  
2 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
3 of negative publicity once the use of the “defeat device” and true characteristics of the  
4 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
5 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
6 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
7 would be.

8           1652. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
9 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
10 and the Rhode Island Class. A vehicle made by a reputable manufacturer of  
11 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
12 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
13 the amount its cars pollutes rather than make environmentally friendly vehicles.

14           1653. Plaintiffs and the Rhode Island Class suffered ascertainable loss caused  
15 by Volkswagen’s misrepresentations and its concealment of and failure to disclose  
16 material information. Plaintiffs who purchased the Affected Vehicles either would  
17 have paid less for their vehicles or would not have purchased or leased them at all.

18           1654. Volkswagen’s unlawful acts and practices complained of herein affect the  
19 public interest.

20           1655. As a direct and proximate result of Volkswagen’s violations of the Rhode  
21 Island CPA, Plaintiffs and the Rhode Island Class have suffered injury-in-fact and/or  
22 actual damage.

23           1656. Plaintiffs and the Rhode Island Class are entitled to recover the greater of  
24 actual damages or \$200 pursuant to R.I. GEN. LAWS § 6-13.1-5.2(a). Plaintiffs also  
25 seek punitive damages in the discretion of the Court because of Volkswagen’s  
26 egregious disregard of consumer and public safety and its long-running concealment  
27 of the serious safety defects and their tragic consequences.  
28

**COUNT II  
FRAUD BY CONCEALMENT**

1657. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1658. This claim is brought on behalf of the Rhode Island Subclass.

1659. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles up to 40 times applicable standards.

1660. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1661. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its



1 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
2 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
3 intentional manipulation of the system. That’s just a whole other level of not only  
4 lying to the government, but also lying to your consumer. People buy diesel cars from  
5 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
6 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
7 want to be spewing noxious gases into the environment.”

8 1662. Necessarily, Volkswagen also took steps to ensure that its employees did  
9 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
10 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
11 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
12 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
13 law, including federal and state clean air laws and emissions regulations, and that its  
14 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
15 representations were material to consumers, both because they concerned the quality  
16 of the Affected Vehicles, including their compliance with applicable federal and state  
17 laws and regulations regarding clean air and emissions, and also because the  
18 representations played a significant role in the value of the vehicles. As Volkswagen  
19 well knew, its customers, including Plaintiffs and Class members, highly valued that  
20 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
21 accordingly.

22 1663. Volkswagen had a duty to disclose its emissions scheme because  
23 knowledge of the scheme and its details were known and/or accessible only to  
24 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
25 maintenance of its scheme, and because Volkswagen knew the facts were not known  
26 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
27 duty to disclose because it made general affirmative representations about the qualities  
28

1 of its vehicles with respect to emissions standards, starting with references to them as  
2 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
3 and incomplete without the disclosure of the additional facts set forth above regarding  
4 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
5 respect to compliance with federal and state clean air laws and emissions regulations,  
6 and its actual practices with respect to the vehicles at issue. Having volunteered to  
7 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
8 partial truth, but the entire truth. These omitted and concealed facts were material  
9 because they directly impact the value of the Affected Vehicles purchased or leased by  
10 Plaintiffs and Class members. Whether a manufacturer's products comply with  
11 federal and state clean air laws and emissions regulations, and whether that  
12 manufacturer tells the truth with respect to such compliance or non-compliance, are  
13 material concerns to a consumer, including with respect to the emissions certification  
14 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
15 members that they were purchasing *clean* diesel vehicles, and certification testing  
16 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
17 process thoroughly.

18 1664. Volkswagen actively concealed and/or suppressed these material facts, in  
19 whole or in part, to pad and protect its profits and to avoid the perception that its  
20 vehicles did not or could not comply with federal and state laws governing clean air  
21 and emissions, which perception would hurt the brand's image and cost Volkswagen  
22 money, and it did so at the expense of Plaintiffs and Class members.

23 1665. On information and belief, Volkswagen has still not made full and  
24 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
25 concealing material information regarding the emissions qualities of its vehicles and  
26 its emissions scheme.

1           1666. Plaintiffs and Class members were unaware of the omitted material facts  
2 referenced herein, and they would not have acted as they did if they had known of the  
3 concealed and/or suppressed facts, in that they would not have purchased purportedly  
4 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
5 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
6 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
7 were justified. Volkswagen was in exclusive control of the material facts, and such  
8 facts were not known to the public, Plaintiffs, or Class members.

9           1667. Because of the concealment and/or suppression of the facts, Plaintiffs and  
10 Class members have sustained damage because they own vehicles that are diminished  
11 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
12 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
13 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
14 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
15 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
16 scheme, and the company’s callous disregard for compliance with applicable federal  
17 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
18 new or previously owned vehicles would have paid less for their vehicles or would not  
19 have purchased or leased them at all.

20           1668. The value of Plaintiffs’ and Class Members’ vehicles has diminished as a  
21 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
22 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
23 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
24 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
25 value for the vehicles. In addition, Class members are entitled to damages for loss of  
26 use, costs of additional fuel, costs of unused warranties, and other damages to be  
27 proved at trial.  
28

1 1669. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
2 damages in an amount to be proven at trial.

3 1670. Volkswagen's acts were done wantonly, maliciously, oppressively,  
4 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
5 members' rights and the representations that Volkswagen made to them, in order to  
6 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
7 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
8 such conduct in the future, which amount is to be determined according to proof.

9 **COUNT III**  
10 **BREACH OF CONTRACT**  
**(BASED ON RHODE ISLAND LAW)**

11 1671. Plaintiff incorporates by reference all preceding allegations as though  
12 fully set forth herein.

13 1672. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
14 owned vehicle purchasers in the Rhode Island Subclass.

15 1673. Volkswagen's misrepresentations and omissions alleged herein, including  
16 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
17 defect and/or defective design as alleged herein, caused Plaintiff and the other Rhode  
18 Island Subclass members to make their purchases or leases of their Affected Vehicles.  
19 Absent those misrepresentations and omissions, Plaintiff and the other Rhode Island  
20 Subclass members would not have purchased or leased these Affected Vehicles, would  
21 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
22 would have purchased or leased less expensive alternative vehicles that did not contain  
23 the CleanDiesel engine system and which were not marketed as including such a  
24 system. Accordingly, Plaintiff and the other Rhode Island Subclass members overpaid  
25 for their Affected Vehicles and did not receive the benefit of their bargain.

26 1674. Each and every sale or lease of an Affected Vehicle by an authorized  
27 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
28

1 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 2 other Rhode Island Subclass members defective Affected Vehicles and by  
 3 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
 4 defect and/or defective design, including information known to Volkswagen rendering  
 5 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 6 equipped with a CleanDiesel engine system.

7 1675. As a direct and proximate result of Volkswagen's breach of contract,  
 8 Plaintiff and the Rhode Island Subclass have been damaged in an amount to be proven  
 9 at trial, which shall include, but is not limited to, all compensatory damages, incidental  
 10 and consequential damages, and other damages allowed by law.

11 **PP. Claims on Behalf of the South Carolina Subclass**

12 **COUNT I**  
 13 **VIOLATIONS OF THE SOUTH CAROLINA**  
 14 **UNFAIR TRADE PRACTICES ACT**  
 15 **(S.C. CODE ANN. § 39-5-10, *ET SEQ.*)**

16 1676. Plaintiff Andrew Bell ("Plaintiff," for purposes of all South Carolina  
 17 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 18 set forth herein.

19 1677. This claim is brought on behalf of the South Carolina Subclass.

20 1678. Defendants are each a "person" under S.C. CODE ANN. § 39-5-10.

21 1679. The South Carolina Unfair Trade Practices Act ("South Carolina UTPA")  
 22 prohibits "unfair or deceptive acts or practices in the conduct of any trade or  
 23 commerce . . . ." S.C. CODE ANN. § 39-5-20(a). Volkswagen engaged in unfair and  
 24 deceptive acts or practices and violated the South Carolina UTPA by fraudulently  
 25 installing the "defeat device" to make it appear that its CleanDiesel engine systems  
 26 complied with EPA regulations.

27 1680. Volkswagen's actions as set forth above occurred in the conduct of trade  
 28 or commerce.

1           1681. In the course of its business, Volkswagen installed the “defeat device”  
2 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
3 and otherwise engaged in activities with a tendency or capacity to deceive.

4 Volkswagen also engaged in unlawful trade practices by employing deception,  
5 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
6 omission of any material fact with intent that others rely upon such concealment,  
7 suppression or omission, in connection with the sale of Affected Vehicles.

8           1682. Volkswagen has known of its use of the “defeat device” and the true  
9 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
10 information until recently.

11           1683. Volkswagen was also aware that it valued profits over environmental  
12 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
13 distributing vehicles throughout the United States that did not comply with EPA  
14 regulations. Volkswagen concealed this information as well.

15           1684. By failing to disclose and by actively concealing the “defeat device” and  
16 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
17 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
18 by presenting itself as a reputable manufacturer that valued safety, environmental  
19 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
20 Volkswagen engaged in unfair and deceptive business practices in violation of the  
21 South Carolina UTPA.

22           1685. In the course of Volkswagen’s business, it willfully failed to disclose and  
23 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
24 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
25 compounded the deception by repeatedly asserting that the Affected Vehicles were  
26 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
27  
28

1 be a reputable manufacturer that valued safety, environmental cleanliness and  
2 efficiency, and stood behind its vehicles once they are on the road.

3 1686. Volkswagen's unfair or deceptive acts or practices were likely to and did  
4 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
5 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
6 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
7 and the true value of the Affected Vehicles.

8 1687. Volkswagen intentionally and knowingly misrepresented material facts  
9 regarding the Affected Vehicles with an intent to mislead Plaintiff and the South  
10 Carolina Class.

11 1688. Volkswagen knew or should have known that its conduct violated the  
12 South Carolina UTPA.

13 1689. As alleged above, Volkswagen made material statements about the safety,  
14 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
15 and Audi brands that were either false or misleading.

16 1690. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness,  
17 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
18 cleanliness and integrity at Volkswagen, because Volkswagen:

- 19 a. Possessed exclusive knowledge that it valued profits  
20 over environmental cleanliness, efficiency, and  
21 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 22 b. Intentionally concealed the foregoing from Plaintiff;  
23 and/or
- 24 c. Made incomplete representations about the safety,  
25 cleanliness, efficiency and reliability of the Affected  
26 Vehicles, while purposefully withholding material  
facts from Plaintiffs and the Class that contradicted  
these representations.

27 1691. Because Volkswagen fraudulently concealed the "defeat device" and the  
28 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft



1 of negative publicity once the use of the “defeat device” and true characteristics of the  
2 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
3 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
4 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
5 would be.

6 1692. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
7 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
8 and the South Carolina Class. A vehicle made by a reputable manufacturer of  
9 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
10 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
11 the amount its cars pollutes rather than make environmentally friendly vehicles.

12 1693. Plaintiff and the South Carolina Class suffered ascertainable loss caused  
13 by Volkswagen’s misrepresentations and its concealment of and failure to disclose  
14 material information. Plaintiffs who purchased the Affected Vehicles either would  
15 have paid less for their vehicles or would not have purchased or leased them at all.

16 1694. Volkswagen’s unlawful acts and practices complained of herein affect the  
17 public interest.

18 1695. As a direct and proximate result of Volkswagen’s violations of the South  
19 Carolina UTPA, Plaintiff and the South Carolina Class have suffered injury-in-fact  
20 and/or actual damage.

21 1696. Pursuant to S.C. CODE ANN. § 39-5-140(a), Plaintiffs seek monetary relief  
22 against Volkswagen to recover for their economic losses. Because Volkswagen’s  
23 actions were willful and knowing, Plaintiffs’ damages should be trebled. *Id.*

24 1697. Plaintiff further alleges that Volkswagen’s malicious and deliberate  
25 conduct warrants an assessment of punitive damages because Volkswagen carried out  
26 despicable conduct with willful and conscious disregard of the rights and safety of  
27 others, subjecting Plaintiffs and the Class to cruel and unjust hardship as a result.  
28

1 Volkswagen's intentionally and willfully misrepresented the safety, cleanliness,  
 2 efficiency and reliability of the Affected Vehicles, deceived Plaintiffs and concealed  
 3 material facts that only Volkswagen knew. Volkswagen's unlawful conduct  
 4 constitutes malice, oppression, and fraud warranting punitive damages.

5 1698. Plaintiff further seeks an order enjoining Volkswagen's unfair or  
 6 deceptive acts or practices.

7 **COUNT II**  
 8 **VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF**  
 9 **MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT**  
 10 **(S.C. CODE ANN. § 56-15-10, *et seq.*)**

11 1699. Plaintiff realleges and incorporates by reference all paragraphs as though  
 12 fully set forth herein.

13 1700. This claim is brought only on behalf of the South Carolina Subclass.

14 1701. Volkswagen was a "manufacturer" as set forth in S.C. CODE ANN. § 56-  
 15 15-10, as it was engaged in the business of manufacturing or assembling new and  
 16 unused motor vehicles.

17 1702. Volkswagen committed unfair or deceptive acts or practices that violated  
 18 the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act  
 19 ("Dealers Act"), S.C. CODE ANN. § 56-15-30.

20 1703. Volkswagen engaged in actions which were arbitrary, in bad faith,  
 21 unconscionable, and which caused damage to Plaintiff, the South Carolina Subclass,  
 22 and to the public.

23 1704. Volkswagen's bad faith and unconscionable actions include, but are not  
 24 limited to: (1) representing that Affected Vehicles have characteristics, uses, benefits,  
 25 and qualities which they do not have, (2) representing that Affected Vehicles are of a  
 26 particular standard, quality, and grade when they are not, (3) advertising Affected  
 27 Vehicles with the intent not to sell them as advertised, (4) representing that a  
 28 transaction involving Affected Vehicles confers or involves rights, remedies, and  
 obligations which it does not, and (5) representing that the subject of a transaction

1 involving Affected Vehicles has been supplied in accordance with a previous  
2 representation when it has not.

3 1705. Volkswagen resorted to and used false and misleading advertisements in  
4 connection with its business. As alleged above, Volkswagen made numerous material  
5 statements about the safety, cleanliness, efficiency and reliability of the Affected  
6 Vehicles that were either false or misleading. Each of these statements contributed to  
7 the deceptive context of Volkswagen's unlawful advertising and representations as a  
8 whole.

9 1706. Pursuant to S.C. CODE ANN. § 56-15-110(2), Plaintiffs bring this action  
10 on behalf of themselves and the South Carolina Class, as the action is one of common  
11 or general interest to many persons and the parties are too numerous to bring them all  
12 before the court.

13 1707. Plaintiff and the South Carolina Class are entitled to double their actual  
14 damages, the cost of the suit, attorney's fees pursuant to S.C. CODE ANN. § 56-15-110.  
15 Plaintiff also seeks injunctive relief under S.C. CODE ANN. § 56-15-110. Plaintiff also  
16 seeks treble damages because Volkswagen acted maliciously.

17 **COUNT III**  
18 **FRAUD BY CONCEALMENT**

19 1708. Plaintiffs reallege and incorporate by reference all paragraphs as though  
20 fully set forth herein.

21 1709. This claim is brought on behalf of the South Carolina Subclass.

22 1710. Volkswagen intentionally concealed and suppressed material facts  
23 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
24 notwithstanding references in the very model names of the subject vehicles as "Clean  
25 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
26 secret scheme to evade federal and state vehicle emissions standards by installing  
27 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
28 which contributes to the creation of ozone and smog. The software installed on the

1 vehicles at issue was designed nefariously to kick-in during emissions certification  
2 testing, such that the vehicles would show far lower emissions than when actually  
3 operating on the road. The result was what Volkswagen intended: vehicles passed  
4 emissions certifications by way of deliberately induced false readings. Reportedly,  
5 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
6 vehicles up to 40 times applicable standards.

7 1711. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
8 representations. They had no way of knowing that Volkswagen's representations were  
9 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
10 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
11 not, unravel Volkswagen's deception on their own.

12 1712. Volkswagen concealed and suppressed material facts concerning what is  
13 evidently the true culture of Volkswagen—one characterized by an emphasis on  
14 profits and sales above compliance with federal and state clean air laws, and emissions  
15 regulations that are meant to protect the public and consumers. It also emphasized  
16 profits and sales over the trust that Plaintiffs and Class members placed in its  
17 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
18 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
19 intentional manipulation of the system. That's just a whole other level of not only  
20 lying to the government, but also lying to your consumer. People buy diesel cars from  
21 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
22 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
23 want to be spewing noxious gases into the environment."

24 1713. Necessarily, Volkswagen also took steps to ensure that its employees did  
25 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
26 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
27 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
28

1 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
2 law, including federal and state clean air laws and emissions regulations, and that its  
3 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
4 representations were material to consumers, both because they concerned the quality  
5 of the Affected Vehicles, including their compliance with applicable federal and state  
6 laws and regulations regarding clean air and emissions, and also because the  
7 representations played a significant role in the value of the vehicles. As Volkswagen  
8 well knew, its customers, including Plaintiffs and Class members, highly valued that  
9 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
10 accordingly.

11 1714. Volkswagen had a duty to disclose its emissions scheme because  
12 knowledge of the scheme and its details were known and/or accessible only to  
13 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
14 maintenance of its scheme, and because Volkswagen knew the facts were not known  
15 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
16 duty to disclose because it made general affirmative representations about the qualities  
17 of its vehicles with respect to emissions standards, starting with references to them as  
18 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
19 and incomplete without the disclosure of the additional facts set forth above regarding  
20 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
21 respect to compliance with federal and state clean air laws and emissions regulations,  
22 and its actual practices with respect to the vehicles at issue. Having volunteered to  
23 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
24 partial truth, but the entire truth. These omitted and concealed facts were material  
25 because they directly impact the value of the Affected Vehicles purchased or leased by  
26 Plaintiffs and Class members. Whether a manufacturer's products comply with  
27 federal and state clean air laws and emissions regulations, and whether that  
28

1 manufacturer tells the truth with respect to such compliance or non-compliance, are  
2 material concerns to a consumer, including with respect to the emissions certification  
3 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
4 members that they were purchasing *clean* diesel vehicles, and certification testing  
5 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
6 process thoroughly.

7 1715. Volkswagen actively concealed and/or suppressed these material facts, in  
8 whole or in part, to pad and protect its profits and to avoid the perception that its  
9 vehicles did not or could not comply with federal and state laws governing clean air  
10 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
11 money, and it did so at the expense of Plaintiffs and Class members.

12 1716. On information and belief, Volkswagen has still not made full and  
13 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
14 concealing material information regarding the emissions qualities of its vehicles and  
15 its emissions scheme.

16 1717. Plaintiffs and Class members were unaware of the omitted material facts  
17 referenced herein, and they would not have acted as they did if they had known of the  
18 concealed and/or suppressed facts, in that they would not have purchased purportedly  
19 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
20 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
21 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
22 were justified. Volkswagen was in exclusive control of the material facts, and such  
23 facts were not known to the public, Plaintiffs, or Class members.

24 1718. Because of the concealment and/or suppression of the facts, Plaintiffs and  
25 Class members have sustained damage because they own vehicles that are diminished  
26 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
27 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
28

1 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
2 branded vehicles and the serious issues engendered by Volkswagen's corporate  
3 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
4 scheme, and the company's callous disregard for compliance with applicable federal  
5 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
6 new or previously owned vehicles would have paid less for their vehicles or would not  
7 have purchased or leased them at all.

8 1719. The value of Plaintiffs' and Class Members' vehicles has diminished as a  
9 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
10 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
11 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
12 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
13 value for the vehicles. In addition, Class members are entitled to damages for loss of  
14 use, costs of additional fuel, costs of unused warranties, and other damages to be  
15 proved at trial.

16 1720. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
17 damages in an amount to be proven at trial.

18 1721. Volkswagen's acts were done wantonly, maliciously, oppressively,  
19 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
20 members' rights and the representations that Volkswagen made to them, in order to  
21 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
22 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
23 such conduct in the future, which amount is to be determined according to proof.

24 **COUNT IV**  
25 **BREACH OF CONTRACT**  
**(BASED ON SOUTH CAROLINA LAW)**

26 1722. Plaintiff incorporates by reference all preceding allegations as though  
27 fully set forth herein.  
28



1           1723. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
2 owned vehicle purchasers in the South Carolina Subclass.

3           1724. Volkswagen's misrepresentations and omissions alleged herein, including  
4 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
5 defect and/or defective design as alleged herein, caused Plaintiff and the other South  
6 Carolina Subclass members to make their purchases or leases of their Affected  
7 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
8 South Carolina Subclass members would not have purchased or leased these Affected  
9 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
10 they paid, and/or would have purchased or leased less expensive alternative vehicles  
11 that did not contain the CleanDiesel engine system and which were not marketed as  
12 including such a system. Accordingly, Plaintiff and the other South Carolina Subclass  
13 members overpaid for their Affected Vehicles and did not receive the benefit of their  
14 bargain.

15           1725. Each and every sale or lease of an Affected Vehicle by an authorized  
16 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
17 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
18 other South Carolina Subclass members defective Affected Vehicles and by  
19 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
20 defect and/or defective design, including information known to Volkswagen rendering  
21 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
22 equipped with a CleanDiesel engine system.

23           1726. As a direct and proximate result of Volkswagen's breach of contract,  
24 Plaintiff and the South Carolina Subclass have been damaged in an amount to be  
25 proven at trial, which shall include, but is not limited to, all compensatory damages,  
26 incidental and consequential damages, and other damages allowed by law  
27  
28

**QQ. Claims on Behalf of the South Dakota Subclass**

**COUNT I  
VIOLATION OF THE SOUTH DAKOTA  
DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION LAW  
(S.D. CODIFIED LAWS § 37-24-6)**

1727. Plaintiff Gary Van Guilder (“Plaintiff,” for purposes of all South Dakota Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1728. This claim is brought on behalf of the South Dakota Subclass.

1729. The South Dakota Deceptive Trade Practices and Consumer Protection Law (“South Dakota CPL”) prohibits deceptive acts or practices, which are defined for relevant purposes to include “[k]nowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby [.]” S.D. CODIFIED LAWS § 37-24-6(1). The conduct of Volkswagen as set forth herein constitutes deceptive acts or practices, fraud, false promises, misrepresentation, concealment, suppression and omission of material facts in violation of S.D. Codified Laws § 37-24-6 and 37-24-31, including, but not limited to, Volkswagen’s misrepresentations and omissions regarding the safety, cleanliness, efficiency and reliability of the Affected Vehicles, and Volkswagen’s misrepresentations concerning a host of other defects and safety issues.

1730. Volkswagen’s actions as set forth above occurred in the conduct of trade or commerce.

1731. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive.

Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or

1 omission of any material fact with intent that others rely upon such concealment,  
2 suppression or omission, in connection with the sale of the Affected Vehicles.

3 1732. Volkswagen has known of its use of the “defeat device” and the true  
4 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
5 information until recently.

6 1733. Volkswagen was also aware that it valued profits over environmental  
7 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
8 distributing vehicles throughout the United States that did not comply with EPA  
9 regulations. Volkswagen concealed this information as well.

10 1734. By failing to disclose and by actively concealing the “defeat device” and  
11 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
12 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
13 by presenting itself as a reputable manufacturer that valued safety, environmental  
14 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
15 Volkswagen engaged in deceptive business practices in violation of the South Dakota  
16 CPL.

17 1735. In the course of Volkswagen’s business, it willfully failed to disclose and  
18 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
19 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
20 compounded the deception by repeatedly asserting that the Affected Vehicles were  
21 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
22 be a reputable manufacturer that valued safety, environmental cleanliness and  
23 efficiency, and stood behind its vehicles once they are on the road.

24 1736. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
25 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
26 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
27  
28

1 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
2 value of the Affected Vehicles.

3 1737. Volkswagen intentionally and knowingly misrepresented material facts  
4 regarding the Affected Vehicles with an intent to mislead Plaintiff and the South  
5 Dakota Class.

6 1738. Volkswagen knew or should have known that its conduct violated the  
7 South Dakota CPL.

8 1739. As alleged above, Volkswagen made material statements about the safety,  
9 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
10 and Audi brands that were either false or misleading.

11 1740. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness,  
12 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
13 cleanliness and integrity at Volkswagen, because Volkswagen:

- 14 a. Possessed exclusive knowledge that it valued profits  
15 over environmental cleanliness, efficiency, and  
16 lawfulness, and that it was manufacturing, selling and  
distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 17 b. Intentionally concealed the foregoing from Plaintiff;  
18 and/or
- 19 c. Made incomplete representations about the safety,  
20 cleanliness, efficiency and reliability of the Affected  
21 Vehicles generally, and the use of the “defeat device”  
and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
22 facts from Plaintiffs that contradicted these  
representations.

23 1741. Because Volkswagen fraudulently concealed the “defeat device” and the  
24 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
25 of negative publicity once the use of the “defeat device” and true characteristics of the  
26 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
27 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
28

1 Volkswagen's conduct, they are now worth significantly less than they otherwise  
2 would be.

3 1742. Volkswagen's fraudulent use of the "defeat device" and its concealment  
4 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
5 and the South Dakota Class. A vehicle made by a reputable manufacturer of  
6 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
7 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
8 the amount its cars pollutes rather than make environmentally friendly vehicles.

9 1743. Plaintiff and the South Dakota Subclass suffered ascertainable loss  
10 caused by Volkswagen's misrepresentations and its concealment of and failure to  
11 disclose material information. Plaintiffs who purchased the Affected Vehicles either  
12 would have paid less for their vehicles or would not have purchased or leased them at  
13 all.

14 1744. Volkswagen's unlawful acts and practices complained of herein affect the  
15 public interest.

16 1745. As a direct and proximate result of Volkswagen's violations of the South  
17 Dakota CPL, Plaintiff and the South Dakota Class have suffered injury-in-fact and/or  
18 actual damage.

19 1746. Under S.D. CODIFIED LAWS § 37-24-31, Plaintiff and the South Dakota  
20 Class are entitled to a recovery of their actual damages suffered as a result of  
21 Volkswagen's acts and practices.

22 **COUNT II**  
23 **FRAUD BY CONCEALMENT**

24 1747. Plaintiffs reallege and incorporate by reference all paragraphs as though  
25 fully set forth herein.

26 1748. This claim is brought on behalf of the South Dakota Subclass.

27 1749. Volkswagen intentionally concealed and suppressed material facts  
28 concerning the quality of the Affected Vehicles. As alleged in this Complaint,

1 notwithstanding references in the very model names of the subject vehicles as “Clean  
2 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
3 secret scheme to evade federal and state vehicle emissions standards by installing  
4 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
5 which contributes to the creation of ozone and smog. The software installed on the  
6 vehicles at issue was designed nefariously to kick-in during emissions certification  
7 testing, such that the vehicles would show far lower emissions than when actually  
8 operating on the road. The result was what Volkswagen intended: vehicles passed  
9 emissions certifications by way of deliberately induced false readings. Reportedly,  
10 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
11 vehicles up to 40 times applicable standards.

12 1750. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
13 representations. They had no way of knowing that Volkswagen’s representations were  
14 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
15 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
16 not, unravel Volkswagen’s deception on their own.

17 1751. Volkswagen concealed and suppressed material facts concerning what is  
18 evidently the true culture of Volkswagen—one characterized by an emphasis on  
19 profits and sales above compliance with federal and state clean air laws, and emissions  
20 regulations that are meant to protect the public and consumers. It also emphasized  
21 profits and sales over the trust that Plaintiffs and Class members placed in its  
22 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
23 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
24 intentional manipulation of the system. That’s just a whole other level of not only  
25 lying to the government, but also lying to your consumer. People buy diesel cars from  
26 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
27  
28

1 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
2 want to be spewing noxious gases into the environment.”

3 1752. Necessarily, Volkswagen also took steps to ensure that its employees did  
4 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
5 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
6 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
7 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
8 law, including federal and state clean air laws and emissions regulations, and that its  
9 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
10 representations were material to consumers, both because they concerned the quality  
11 of the Affected Vehicles, including their compliance with applicable federal and state  
12 laws and regulations regarding clean air and emissions, and also because the  
13 representations played a significant role in the value of the vehicles. As Volkswagen  
14 well knew, its customers, including Plaintiffs and Class members, highly valued that  
15 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
16 accordingly.

17 1753. Volkswagen had a duty to disclose its emissions scheme because  
18 knowledge of the scheme and its details were known and/or accessible only to  
19 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
20 maintenance of its scheme, and because Volkswagen knew the facts were not known  
21 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
22 duty to disclose because it made general affirmative representations about the qualities  
23 of its vehicles with respect to emissions standards, starting with references to them as  
24 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
25 and incomplete without the disclosure of the additional facts set forth above regarding  
26 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
27 respect to compliance with federal and state clean air laws and emissions regulations,  
28



1 and its actual practices with respect to the vehicles at issue. Having volunteered to  
2 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
3 partial truth, but the entire truth. These omitted and concealed facts were material  
4 because they directly impact the value of the Affected Vehicles purchased or leased by  
5 Plaintiffs and Class members. Whether a manufacturer's products comply with  
6 federal and state clean air laws and emissions regulations, and whether that  
7 manufacturer tells the truth with respect to such compliance or non-compliance, are  
8 material concerns to a consumer, including with respect to the emissions certification  
9 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
10 members that they were purchasing *clean* diesel vehicles, and certification testing  
11 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
12 process thoroughly.

13 1754. Volkswagen actively concealed and/or suppressed these material facts, in  
14 whole or in part, to pad and protect its profits and to avoid the perception that its  
15 vehicles did not or could not comply with federal and state laws governing clean air  
16 and emissions, which perception would hurt the brand's image and cost Volkswagen  
17 money, and it did so at the expense of Plaintiffs and Class members.

18 1755. On information and belief, Volkswagen has still not made full and  
19 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
20 concealing material information regarding the emissions qualities of its vehicles and  
21 its emissions scheme.

22 1756. Plaintiffs and Class members were unaware of the omitted material facts  
23 referenced herein, and they would not have acted as they did if they had known of the  
24 concealed and/or suppressed facts, in that they would not have purchased purportedly  
25 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
26 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
27 light of the information concealed from them. Plaintiffs' and Class Members' actions  
28

1 were justified. Volkswagen was in exclusive control of the material facts, and such  
2 facts were not known to the public, Plaintiffs, or Class members.

3 1757. Because of the concealment and/or suppression of the facts, Plaintiffs and  
4 Class members have sustained damage because they own vehicles that are diminished  
5 in value as a result of Volkswagen's concealment of the true quality and quantity of  
6 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
7 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
8 branded vehicles and the serious issues engendered by Volkswagen's corporate  
9 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
10 scheme, and the company's callous disregard for compliance with applicable federal  
11 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
12 new or previously owned vehicles would have paid less for their vehicles or would not  
13 have purchased or leased them at all.

14 1758. The value of Plaintiffs' and Class Members' vehicles has diminished as a  
15 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
16 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
17 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
18 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
19 value for the vehicles. In addition, Class members are entitled to damages for loss of  
20 use, costs of additional fuel, costs of unused warranties, and other damages to be  
21 proved at trial.

22 1759. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
23 damages in an amount to be proven at trial.

24 1760. Volkswagen's acts were done wantonly, maliciously, oppressively,  
25 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
26 members' rights and the representations that Volkswagen made to them, in order to  
27 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
28

1 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
2 such conduct in the future, which amount is to be determined according to proof.

3 **COUNT III**  
4 **BREACH OF CONTRACT**  
5 **(BASED ON SOUTH DAKOTA LAW)**

6 1761. Plaintiff incorporates by reference all preceding allegations as though  
7 fully set forth herein.

8 1762. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
9 owned vehicle purchasers in the South Dakota Subclass.

10 1763. Volkswagen's misrepresentations and omissions alleged herein, including  
11 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
12 defect and/or defective design as alleged herein, caused Plaintiff and the other South  
13 Dakota Subclass members to make their purchases or leases of their Affected  
14 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
15 South Dakota Subclass members would not have purchased or leased these Affected  
16 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
17 they paid, and/or would have purchased or leased less expensive alternative vehicles  
18 that did not contain the CleanDiesel engine system and which were not marketed as  
19 including such a system. Accordingly, Plaintiff and the other South Dakota Subclass  
20 members overpaid for their Affected Vehicles and did not receive the benefit of their  
21 bargain.

22 1764. Each and every sale or lease of an Affected Vehicle by an authorized  
23 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
24 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
25 other South Dakota Subclass members defective Affected Vehicles and by  
26 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
27 defect and/or defective design, including information known to Volkswagen rendering  
28

1 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
2 equipped with a CleanDiesel engine system.

3 1765. As a direct and proximate result of Volkswagen's breach of contract,  
4 Plaintiff and the South Dakota Subclass have been damaged in an amount to be proven  
5 at trial, which shall include, but is not limited to, all compensatory damages, incidental  
6 and consequential damages, and other damages allowed by law.

7 **RR. Claims Brought on Behalf of the Tennessee Subclass**

8 **COUNT I**  
9 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT**  
10 **(TENN. CODE ANN. § 47-18-101, ET SEQ.)**

11 1766. Plaintiff Barry Cross ("Plaintiff," for purposes of all Tennessee Subclass  
12 Counts) incorporates by reference all preceding allegations as though fully set forth  
13 herein.

14 1767. This claim is brought on behalf of the Tennessee Subclass.

15 1768. Plaintiff and the Tennessee Class are "natural persons" and "consumers"  
16 within the meaning of TENN. CODE ANN. § 47-18-103(2).

17 1769. Defendants are each a "person" within the meaning of TENN. CODE ANN.  
18 § 47-18-103(2).

19 1770. Volkswagen's conduct complained of herein affected "trade,"  
20 "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. §  
21 47-18-103(19).

22 1771. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits  
23 "[u]nfair or deceptive acts or practices affecting the conduct of any trade or  
24 commerce," including but not limited to: "Representing that goods or services have  
25 ... characteristics, [or] ... benefits ... that they do not have...;" "Representing that  
26 goods or services are of a particular standard, quality or grade... if they are of  
27 another;" and "Advertising goods or services with intent not to sell them as  
28 advertised." TENN. CODE ANN. § 47-18-104. Volkswagen violated the Tennessee

1 CPA by engaging in unfair or deceptive acts, including representing that Affected  
2 Vehicles have characteristics or benefits that they did not have; representing that  
3 Affected Vehicles are of a particular standard, quality, or grade when they are of  
4 another; and advertising Affected Vehicles with intent not to sell them as advertised.

5 1772. In the course of its business, Volkswagen installed the “defeat device”  
6 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
7 and otherwise engaged in activities with a tendency or capacity to deceive.

8 Volkswagen also engaged in unlawful trade practices by employing deception,  
9 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
10 omission of any material fact with intent that others rely upon such concealment,  
11 suppression or omission, in connection with the sale of Affected Vehicles.

12 1773. Volkswagen has known of its use of the “defeat device” and the true  
13 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
14 information until recently.

15 1774. Volkswagen was also aware that it valued profits over environmental  
16 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
17 distributing vehicles throughout the United States that did not comply with EPA  
18 regulations. Volkswagen concealed this information as well.

19 1775. By failing to disclose and by actively concealing the “defeat device” and  
20 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
21 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
22 by presenting itself as a reputable manufacturer that valued safety, environmental  
23 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
24 Volkswagen engaged in unfair and deceptive business practices in violation of the  
25 Tennessee CPA.

26 1776. In the course of Volkswagen’s business, it willfully failed to disclose and  
27 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
28

1 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
 2 compounded the deception by repeatedly asserting that the Affected Vehicles were  
 3 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
 4 be a reputable manufacturer that valued safety, environmental cleanliness and  
 5 efficiency, and stood behind its vehicles once they are on the road.

6 1777. Volkswagen's unfair or deceptive acts or practices were likely to and did  
 7 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
 8 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
 9 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
 10 and the true value of the Affected Vehicles.

11 1778. Volkswagen intentionally and knowingly misrepresented material facts  
 12 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Tennessee  
 13 Class.

14 1779. Volkswagen knew or should have known that its conduct violated the  
 15 Tennessee CPA.

16 1780. As alleged above, Volkswagen made material statements about the safety,  
 17 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
 18 and Audi brands that were either false or misleading.

19 1781. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness,  
 20 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 21 cleanliness and integrity at Volkswagen, because Volkswagen:

- 22 a. Possessed exclusive knowledge that it valued profits  
 23 over environmental cleanliness, efficiency, and  
 24 lawfulness, and that it was manufacturing, selling and  
 distributing vehicles throughout the United States that  
 did not comply with EPA regulations;
- 25 b. Intentionally concealed the foregoing from Plaintiff;  
 26 and/or
- 27 c. Made incomplete representations about the safety,  
 28 cleanliness, efficiency and reliability of the Affected  
 Vehicles generally, and the use of the "defeat device"  
 and true nature of the CleanDiesel engine system in

1 particular, while purposefully withholding material  
2 facts from Plaintiffs that contradicted these  
representations.

3 1782. Because Volkswagen fraudulently concealed the “defeat device” and the  
4 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
5 of negative publicity once the use of the “defeat device” and true characteristics of the  
6 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
7 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
8 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
9 would be.

10 1783. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
11 of the true characteristics of the CleanDiesel engine system were material to Plaintiff  
12 and the Tennessee Class. A vehicle made by a reputable manufacturer of  
13 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
14 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
15 the amount its cars pollutes rather than make environmentally friendly vehicles.

16 1784. Plaintiff and the Tennessee Class suffered ascertainable loss caused by  
17 Volkswagen’s misrepresentations and its concealment of and failure to disclose  
18 material information. Plaintiffs who purchased the Affected Vehicles either would  
19 have paid less for their vehicles or would not have purchased or leased them at all.

20 1785. Volkswagen’s unlawful acts and practices complained of herein affect the  
21 public interest.

22 1786. As a direct and proximate result of Volkswagen’s violations of the  
23 Tennessee CPA, Plaintiff and the Tennessee Class have suffered injury-in-fact and/or  
24 actual damage.

25 1787. Pursuant to TENN. CODE § 47-18-109(a), Plaintiff and the Tennessee  
26 Class seek monetary relief against Volkswagen measured as actual damages in an  
27 amount to be determined at trial, treble damages as a result of Volkswagen’s willful or  
28



1 knowing violations, and any other just and proper relief available under the Tennessee  
2 CPA.

3 **COUNT II**  
4 **FRAUD BY CONCEALMENT**

5 1788. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 1789. This claim is brought on behalf of the Tennessee Subclass.

8 1790. Volkswagen intentionally concealed and suppressed material facts  
9 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
10 notwithstanding references in the very model names of the subject vehicles as “Clean  
11 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
12 secret scheme to evade federal and state vehicle emissions standards by installing  
13 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
14 which contributes to the creation of ozone and smog. The software installed on the  
15 vehicles at issue was designed nefariously to kick-in during emissions certification  
16 testing, such that the vehicles would show far lower emissions than when actually  
17 operating on the road. The result was what Volkswagen intended: vehicles passed  
18 emissions certifications by way of deliberately induced false readings. Reportedly,  
19 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
20 vehicles up to 40 times applicable standards.

21 1791. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
22 representations. They had no way of knowing that Volkswagen’s representations were  
23 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
24 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
25 not, unravel Volkswagen’s deception on their own.

26 1792. Volkswagen concealed and suppressed material facts concerning what is  
27 evidently the true culture of Volkswagen—one characterized by an emphasis on  
28 profits and sales above compliance with federal and state clean air laws, and emissions

1 regulations that are meant to protect the public and consumers. It also emphasized  
2 profits and sales over the trust that Plaintiffs and Class members placed in its  
3 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
4 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
5 intentional manipulation of the system. That’s just a whole other level of not only  
6 lying to the government, but also lying to your consumer. People buy diesel cars from  
7 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
8 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
9 want to be spewing noxious gases into the environment.”

10 1793. Necessarily, Volkswagen also took steps to ensure that its employees did  
11 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
12 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
13 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
14 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
15 law, including federal and state clean air laws and emissions regulations, and that its  
16 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
17 representations were material to consumers, both because they concerned the quality  
18 of the Affected Vehicles, including their compliance with applicable federal and state  
19 laws and regulations regarding clean air and emissions, and also because the  
20 representations played a significant role in the value of the vehicles. As Volkswagen  
21 well knew, its customers, including Plaintiffs and Class members, highly valued that  
22 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
23 accordingly.

24 1794. Volkswagen had a duty to disclose its emissions scheme because  
25 knowledge of the scheme and its details were known and/or accessible only to  
26 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
27 maintenance of its scheme, and because Volkswagen knew the facts were not known  
28

1 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
2 duty to disclose because it made general affirmative representations about the qualities  
3 of its vehicles with respect to emissions standards, starting with references to them as  
4 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
5 and incomplete without the disclosure of the additional facts set forth above regarding  
6 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
7 respect to compliance with federal and state clean air laws and emissions regulations,  
8 and its actual practices with respect to the vehicles at issue. Having volunteered to  
9 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
10 partial truth, but the entire truth. These omitted and concealed facts were material  
11 because they directly impact the value of the Affected Vehicles purchased or leased by  
12 Plaintiffs and Class members. Whether a manufacturer's products comply with  
13 federal and state clean air laws and emissions regulations, and whether that  
14 manufacturer tells the truth with respect to such compliance or non-compliance, are  
15 material concerns to a consumer, including with respect to the emissions certification  
16 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
17 members that they were purchasing *clean* diesel vehicles, and certification testing  
18 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
19 process thoroughly.

20 1795. Volkswagen actively concealed and/or suppressed these material facts, in  
21 whole or in part, to pad and protect its profits and to avoid the perception that its  
22 vehicles did not or could not comply with federal and state laws governing clean air  
23 and emissions, which perception would hurt the brand's image and cost Volkswagen  
24 money, and it did so at the expense of Plaintiffs and Class members.

25 1796. On information and belief, Volkswagen has still not made full and  
26 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
27  
28

1 concealing material information regarding the emissions qualities of its vehicles and  
2 its emissions scheme.

3 1797. Plaintiffs and Class members were unaware of the omitted material facts  
4 referenced herein, and they would not have acted as they did if they had known of the  
5 concealed and/or suppressed facts, in that they would not have purchased purportedly  
6 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
7 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
8 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
9 were justified. Volkswagen was in exclusive control of the material facts, and such  
10 facts were not known to the public, Plaintiffs, or Class members.

11 1798. Because of the concealment and/or suppression of the facts, Plaintiffs and  
12 Class members have sustained damage because they own vehicles that are diminished  
13 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
14 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
15 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
16 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
17 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
18 scheme, and the company’s callous disregard for compliance with applicable federal  
19 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
20 new or previously owned vehicles would have paid less for their vehicles or would not  
21 have purchased or leased them at all.

22 1799. The value of Plaintiffs’ and Class Members’ vehicles has diminished as a  
23 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
24 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
25 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
26 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
27 value for the vehicles. In addition, Class members are entitled to damages for loss of  
28

1 use, costs of additional fuel, costs of unused warranties, and other damages to be  
2 proved at trial.

3 1800. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
4 damages in an amount to be proven at trial.

5 1801. Volkswagen's acts were done wantonly, maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
7 members' rights and the representations that Volkswagen made to them, in order to  
8 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
9 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
10 such conduct in the future, which amount is to be determined according to proof.

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
**(BASED ON TENNESSEE LAW)**

13 1802. Plaintiff incorporates by reference all preceding allegations as though  
14 fully set forth herein.

15 1803. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
16 owned vehicle purchasers in the Tennessee Subclass.

17 1804. Volkswagen's misrepresentations and omissions alleged herein, including  
18 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
19 defect and/or defective design as alleged herein, caused Plaintiff and the other  
20 Tennessee Subclass members to make their purchases or leases of their Affected  
21 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
22 Tennessee Subclass members would not have purchased or leased these Affected  
23 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
24 they paid, and/or would have purchased or leased less expensive alternative vehicles  
25 that did not contain the CleanDiesel engine system and which were not marketed as  
26 including such a system. Accordingly, Plaintiff and the other Tennessee Subclass  
27  
28

1 members overpaid for their Affected Vehicles and did not receive the benefit of their  
2 bargain.

3 1805. Each and every sale or lease of an Affected Vehicle by an authorized  
4 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
5 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
6 other Tennessee Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
8 defect and/or defective design, including information known to Volkswagen rendering  
9 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
10 equipped with a CleanDiesel engine system.

11 1806. As a direct and proximate result of Volkswagen's breach of contract,  
12 Plaintiff and the Tennessee Subclass have been damaged in an amount to be proven at  
13 trial, which shall include, but is not limited to, all compensatory damages, incidental  
14 and consequential damages, and other damages allowed by law.

15 **SS. Claims Brought on Behalf of the Texas Subclass**

16 **COUNT I**  
17 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**  
**(TEX. BUS. & COM. CODE §§ 17.41, *et seq.*)**

18 1807. Plaintiff Justin Holloway ("Plaintiff," for purposes of all Texas Subclass  
19 Counts) incorporate by reference all preceding allegations as though fully set forth  
20 herein.

21 1808. Plaintiff intends to assert a claim under the Texas Deceptive Trade  
22 Practices Act ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or  
23 deceptive acts or practices in the conduct of any trade or commerce." TEX. BUS. &  
24 COM. CODE § 17.46. Plaintiffs will make a demand in satisfaction of TEX. BUS. &  
25 COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the  
26 TDTPA once the required 60 days have elapsed. This paragraph is included for  
27  
28

1 purposes of notice only and is not intended to actually assert a claim under the  
2 TDTPA.

3 **COUNT II**  
4 **BREACH OF CONTRACT**  
**(BASED ON TEXAS LAW)**

5 1809. Plaintiffs incorporate by reference all preceding allegations as though  
6 fully set forth herein.

7 1810. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
8 owned vehicle purchasers in the Texas Subclass.

9 1811. Volkswagen's misrepresentations and omissions alleged herein, including  
10 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
11 defect and/or defective design as alleged herein, caused Plaintiffs and the other Texas  
12 Subclass members to make their purchases or leases of their Affected Vehicles.  
13 Absent those misrepresentations and omissions, Plaintiffs and the other Texas  
14 Subclass members would not have purchased or leased these Affected Vehicles, would  
15 not have purchased or leased these Affected Vehicles at the prices they paid, and/or  
16 would have purchased or leased less expensive alternative vehicles that did not contain  
17 the CleanDiesel engine system and which were not marketed as including such a  
18 system. Accordingly, Plaintiff and the other Texas Subclass members overpaid for  
19 their Affected Vehicles and did not receive the benefit of their bargain.

20 1812. Each and every sale or lease of an Affected Vehicle by an authorized  
21 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
22 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
23 other Texas Subclass members defective Affected Vehicles and by misrepresenting or  
24 failing to disclose the existence of the CleanDiesel engine system's defect and/or  
25 defective design, including information known to Volkswagen rendering each  
26 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
27 equipped with a CleanDiesel engine system.



1 1813. As a direct and proximate result of Volkswagen's breach of contract,  
2 Plaintiff and the Texas Subclass have been damaged in an amount to be proven at trial,  
3 which shall include, but is not limited to, all compensatory damages, incidental and  
4 consequential damages, and other damages allowed by law.

5 **COUNT III**  
6 **FRAUD BY CONCEALMENT**

7 1814. Plaintiffs reallege and incorporate by reference all paragraphs as though  
8 fully set forth herein.

9 1815. This claim is brought on behalf of the Texas Subclass.

10 1816. Volkswagen intentionally concealed and suppressed material facts  
11 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
12 notwithstanding references in the very model names of the subject vehicles as "Clean  
13 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
14 secret scheme to evade federal and state vehicle emissions standards by installing  
15 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
16 which contributes to the creation of ozone and smog. The software installed on the  
17 vehicles at issue was designed nefariously to kick-in during emissions certification  
18 testing, such that the vehicles would show far lower emissions than when actually  
19 operating on the road. The result was what Volkswagen intended: vehicles passed  
20 emissions certifications by way of deliberately induced false readings. Reportedly,  
21 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
22 vehicles at up to 40 times applicable standards.

23 1817. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
24 representations. They had no way of knowing that Volkswagen's representations were  
25 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
26 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
27 not, unravel Volkswagen's deception on their own.  
28

1           1818. Volkswagen concealed and suppressed material facts concerning what is  
2           evidently the true culture of Volkswagen—one characterized by an emphasis on  
3           profits and sales above compliance with federal and state clean air laws, and emissions  
4           regulations that are meant to protect the public and consumers. It also emphasized  
5           profits and sales over the trust that Plaintiffs and Class members placed in its  
6           representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
7           *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
8           intentional manipulation of the system. That’s just a whole other level of not only  
9           lying to the government, but also lying to your consumer. People buy diesel cars from  
10          Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
11          which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
12          want to be spewing noxious gases into the environment.”

13          1819. Necessarily, Volkswagen also took steps to ensure that its employees did  
14          not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
15          Class members. Volkswagen did so in order to boost the reputations of its vehicles  
16          and to falsely assure purchasers and lessors of its vehicles, including previously owned  
17          vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
18          law, including federal and state clean air laws and emissions regulations, and that its  
19          vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
20          representations were material to consumers, both because they concerned the quality  
21          of the Affected Vehicles, including their compliance with applicable federal and state  
22          laws and regulations regarding clean air and emissions, and also because the  
23          representations played a significant role in the value of the vehicles. As Volkswagen  
24          well knew, its customers, including Plaintiffs and Class members, highly valued that  
25          the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
26          accordingly.

1           1820. Volkswagen had a duty to disclose its emissions scheme because  
2 knowledge of the scheme and its details were known and/or accessible only to  
3 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
4 maintenance of its scheme, and because Volkswagen knew the facts were not known  
5 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
6 duty to disclose because it made general affirmative representations about the qualities  
7 of its vehicles with respect to emissions standards, starting with references to them as  
8 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
9 and incomplete without the disclosure of the additional facts set forth above regarding  
10 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
11 respect to compliance with federal and state clean air laws and emissions regulations,  
12 and its actual practices with respect to the vehicles at issue. Having volunteered to  
13 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
14 partial truth, but the entire truth. These omitted and concealed facts were material  
15 because they directly impact the value of the Affected Vehicles purchased or leased by  
16 Plaintiffs and Class members. Whether a manufacturer's products comply with  
17 federal and state clean air laws and emissions regulations, and whether that  
18 manufacturer tells the truth with respect to such compliance or non-compliance, are  
19 material concerns to a consumer, including with respect to the emissions certification  
20 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
21 members that they were purchasing *clean* diesel vehicles, and certification testing  
22 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
23 process thoroughly.

24           1821. Volkswagen actively concealed and/or suppressed these material facts, in  
25 whole or in part, to pad and protect its profits and to avoid the perception that its  
26 vehicles did not or could not comply with federal and state laws governing clean air  
27  
28

1 and emissions, which perception would hurt the brand's image and cost Volkswagen  
2 money, and it did so at the expense of Plaintiffs and Class members.

3 1822. On information and belief, Volkswagen has still not made full and  
4 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
5 concealing material information regarding the emission qualities of its vehicles and its  
6 emissions scheme.

7 1823. Plaintiffs and Class members were unaware of the omitted material facts  
8 referenced herein, and they would not have acted as they did if they had known of the  
9 concealed and/or suppressed facts, in that they would not have purchased purportedly  
10 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
11 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
12 light of the information concealed from them. Plaintiffs' and Class members' actions  
13 were justified. Volkswagen was in exclusive control of the material facts, and such  
14 facts were not known to the public, Plaintiffs, or Class members.

15 1824. Because of the concealment and/or suppression of the facts, Plaintiffs and  
16 Class members have sustained damage because they own vehicles that are diminished  
17 in value as a result of Volkswagen's concealment of the true quality and quantity of  
18 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
19 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
20 branded vehicles and the serious issues engendered by Volkswagen's corporate  
21 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
22 scheme, and the company's callous disregard for compliance with applicable federal  
23 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
24 new or previously owned vehicles would have paid less for their vehicles or would not  
25 have purchased or leased them at all.

26 1825. The value of Plaintiffs' and Class members' vehicles has diminished as a  
27 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
28

1 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
 2 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
 3 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
 4 value for the vehicles. In addition, Class members are entitled to damages for loss of  
 5 use, costs of additional fuel, costs of unused warranties, and other damages to be  
 6 proved at trial.

7 1826. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
 8 damages in an amount to be proven at trial.

9 1827. Volkswagen's acts were done wantonly, maliciously, oppressively,  
 10 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
 11 members' rights and the representations that Volkswagen made to them, in order to  
 12 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
 13 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
 14 such conduct in the future, which amount is to be determined according to proof.

15 **TT. Claims Brought on Behalf of the Utah Subclass**

16 **COUNT I**  
 17 **VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT**  
**(UTAH CODE ANN. § 13-11-1, *ET SEQ.*)**

18 1828. Plaintiff Kelly King ("Plaintiff," for purposes of all Utah Subclass  
 19 Counts) incorporates by reference all preceding allegations as though fully set forth  
 20 herein.

21 1829. This claim is brought on behalf of the Utah Class.

22 1830. Volkswagen is a "supplier" under the Utah Consumer Sales Practices Act  
 23 ("Utah CSPA"), UTAH CODE ANN. § 13-11-3.

24 1831. Utah Class Members are "persons" under UTAH CODE ANN. § 13-11-3.

25 1832. The sale of the Affected Vehicles to the Utah Class Members was a  
 26 "consumer transaction" within the meaning of UTAH CODE ANN. § 13-11-3.

1           1833. The Utah CSPA makes unlawful any “deceptive act or practice by a  
2           supplier in connection with a consumer transaction” under UTAH CODE ANN. § 13-11-  
3           4. Specifically, “a supplier commits a deceptive act or practice if the supplier  
4           knowingly or intentionally: (a) indicates that the subject of a consumer transaction has  
5           sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it  
6           has not” or “(b) indicates that the subject of a consumer transaction is of a particular  
7           standard, quality, grade, style, or model, if it is not.” UTAH CODE ANN. § 13-11-4.  
8           “An unconscionable act or practice by a supplier in connection with a consumer  
9           transaction” also violates the Utah CSPA. UTAH CODE ANN. § 13-11-5.

10           1834. Volkswagen committed deceptive acts or practices in the conduct of trade  
11           or commerce, by, among other things, engaging in unconscionable acts, representing  
12           that the Affected Vehicles have characteristics, uses, benefits, and qualities which they  
13           do not have; and representing that the Affected Vehicles are of a particular standard,  
14           quality, and grade when they are not

15           1835. In the course of its business, Volkswagen installed the “defeat device”  
16           and concealed that its CleanDiesel systems failed EPA regulations as described herein  
17           and otherwise engaged in activities with a tendency or capacity to deceive.  
18           Volkswagen also engaged in unlawful trade practices by employing deception,  
19           deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
20           omission of any material fact with intent that others rely upon such concealment,  
21           suppression or omission, in connection with the sale of Affected Vehicles.

22           1836. Volkswagen has known of its use of the “defeat device” and the true  
23           nature of its CleanDiesel engine system for at least six years, but concealed all of that  
24           information until recently.

25           1837. Volkswagen was also aware that it valued profits over environmental  
26           cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
27  
28

1 distributing vehicles throughout the United States that did not comply with EPA  
2 regulations. Volkswagen concealed this information as well.

3 1838. By failing to disclose and by actively concealing the “defeat device” and  
4 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
5 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
6 by presenting itself as a reputable manufacturer that valued safety, environmental  
7 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
8 Volkswagen engaged in deceptive business practices in violation of the Utah CSPA.

9 1839. In the course of Volkswagen’s business, it willfully failed to disclose and  
10 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
11 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
12 compounded the deception by repeatedly asserting that the Affected Vehicles were  
13 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
14 be a reputable manufacturer that valued safety, environmental cleanliness and  
15 efficiency, and stood behind its vehicles once they are on the road.

16 1840. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
17 in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness  
18 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand,  
19 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true  
20 value of the Affected Vehicles.

21 1841. Volkswagen intentionally and knowingly misrepresented material facts  
22 regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Utah  
23 Class.

24 1842. Volkswagen knew or should have known that its conduct violated the  
25 Utah CSPA.



1           1843. As alleged above, Volkswagen made material statements about the safety,  
2 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
3 and Audi brands that were either false or misleading.

4           1844. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
5 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
6 cleanliness and integrity at Volkswagen, because Volkswagen:

- 7           a.     Possessed exclusive knowledge that it valued profits  
8                 over environmental cleanliness, efficiency, and  
9                 lawfulness, and that it was manufacturing, selling and  
               distributing vehicles throughout the United States that  
               did not comply with EPA regulations;
- 10          b.     Intentionally concealed the foregoing from Plaintiffs;  
11                 and/or
- 12          c.     Made incomplete representations about the safety,  
13                 cleanliness, efficiency and reliability of the Affected  
14                 Vehicles generally, and the use of the “defeat device”  
               and true nature of the CleanDiesel engine system in  
               particular, while purposefully withholding material  
               facts from Plaintiffs that contradicted these  
               representations.

15           1845. Because Volkswagen fraudulently concealed the “defeat device” and the  
16 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
17 of negative publicity once the use of the “defeat device” and true characteristics of the  
18 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
19 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
20 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
21 would be.

22           1846. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
23 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
24 and the Utah Class. A vehicle made by a reputable manufacturer of environmentally  
25 friendly vehicles is worth more than an otherwise comparable vehicle made by a  
26 disreputable and dishonest manufacturer of polluting vehicles that conceals the  
27 amount its cars pollutes rather than make environmentally friendly vehicles.  
28

1847. Plaintiffs and the Utah Class suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1848. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Utah CSPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1849. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1850. As a direct and proximate result of Volkswagen's violations of the Utah CSPA, Plaintiffs and the Utah Class have suffered injury-in-fact and/or actual damage.

1851. Pursuant to UTAH CODE ANN. § 13-11-4, Plaintiffs and the Utah Class seek monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$2,000 for each Plaintiff and each Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

## COUNT II FRAUD BY CONCEALMENT

1852. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1853. This claim is brought on behalf of the Utah Subclass.

1854. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a

1 secret scheme to evade federal and state vehicle emissions standards by installing  
2 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
3 which contributes to the creation of ozone and smog. The software installed on the  
4 vehicles at issue was designed nefariously to kick-in during emissions certification  
5 testing, such that the vehicles would show far lower emissions than when actually  
6 operating on the road. The result was what Volkswagen intended: vehicles passed  
7 emissions certifications by way of deliberately induced false readings. Reportedly,  
8 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
9 vehicles at up to 40 times applicable standards.

10 1855. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
11 representations. They had no way of knowing that Volkswagen's representations were  
12 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
13 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
14 not, unravel Volkswagen's deception on their own.

15 1856. Volkswagen concealed and suppressed material facts concerning what is  
16 evidently the true culture of Volkswagen—one characterized by an emphasis on  
17 profits and sales above compliance with federal and state clean air laws, and emissions  
18 regulations that are meant to protect the public and consumers. It also emphasized  
19 profits and sales over the trust that Plaintiffs and Class members placed in its  
20 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
21 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
22 intentional manipulation of the system. That's just a whole other level of not only  
23 lying to the government, but also lying to your consumer. People buy diesel cars from  
24 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
25 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
26 want to be spewing noxious gases into the environment."  
27  
28

1           1857. Necessarily, Volkswagen also took steps to ensure that its employees did  
2 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
3 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
4 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
5 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
6 law, including federal and state clean air laws and emissions regulations, and that its  
7 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
8 representations were material to consumers, both because they concerned the quality  
9 of the Affected Vehicles, including their compliance with applicable federal and state  
10 laws and regulations regarding clean air and emissions, and also because the  
11 representations played a significant role in the value of the vehicles. As Volkswagen  
12 well knew, its customers, including Plaintiffs and Class members, highly valued that  
13 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
14 accordingly.

15           1858. Volkswagen had a duty to disclose its emissions scheme because  
16 knowledge of the scheme and its details were known and/or accessible only to  
17 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
18 maintenance of its scheme, and because Volkswagen knew the facts were not known  
19 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
20 duty to disclose because it made general affirmative representations about the qualities  
21 of its vehicles with respect to emissions standards, starting with references to them as  
22 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
23 and incomplete without the disclosure of the additional facts set forth above regarding  
24 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
25 respect to compliance with federal and state clean air laws and emissions regulations,  
26 and its actual practices with respect to the vehicles at issue. Having volunteered to  
27 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
28

1 partial truth, but the entire truth. These omitted and concealed facts were material  
2 because they directly impact the value of the Affected Vehicles purchased or leased by  
3 Plaintiffs and Class members. Whether a manufacturer's products comply with  
4 federal and state clean air laws and emissions regulations, and whether that  
5 manufacturer tells the truth with respect to such compliance or non-compliance, are  
6 material concerns to a consumer, including with respect to the emissions certification  
7 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
8 members that they were purchasing *clean* diesel vehicles, and certification testing  
9 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
10 process thoroughly.

11 1859. Volkswagen actively concealed and/or suppressed these material facts, in  
12 whole or in part, to pad and protect its profits and to avoid the perception that its  
13 vehicles did not or could not comply with federal and state laws governing clean air  
14 and emissions, which perception would hurt the brand's image and cost Volkswagen  
15 money, and it did so at the expense of Plaintiffs and Class members.

16 1860. On information and belief, Volkswagen has still not made full and  
17 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
18 concealing material information regarding the emissions qualities of its vehicles and  
19 its emissions scheme.

20 1861. Plaintiffs and Class members were unaware of the omitted material facts  
21 referenced herein, and they would not have acted as they did if they had known of the  
22 concealed and/or suppressed facts, in that they would not have purchased purportedly  
23 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
24 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
25 light of the information concealed from them. Plaintiffs' and Class Members' actions  
26 were justified. Volkswagen was in exclusive control of the material facts, and such  
27 facts were not known to the public, Plaintiffs, or Class members.

1           1862. Because of the concealment and/or suppression of the facts, Plaintiffs and  
2   Class members have sustained damage because they own vehicles that are diminished  
3   in value as a result of Volkswagen's concealment of the true quality and quantity of  
4   those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
5   emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
6   branded vehicles and the serious issues engendered by Volkswagen's corporate  
7   policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
8   scheme, and the company's callous disregard for compliance with applicable federal  
9   and state laws and regulations, Plaintiffs and Class members who purchased or leased  
10   new or previously owned vehicles would have paid less for their vehicles or would not  
11   have purchased or leased them at all.

12           1863. The value of Plaintiffs' and Class Members' vehicles has diminished as a  
13   result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
14   greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
15   Class members' vehicles and made any reasonable consumer reluctant to purchase any  
16   of the Affected Vehicles, let alone pay what otherwise would have been fair market  
17   value for the vehicles. In addition, Class members are entitled to damages for loss of  
18   use, costs of additional fuel, costs of unused warranties, and other damages to be  
19   proved at trial.

20           1864. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
21   damages in an amount to be proven at trial.

22           1865. Volkswagen's acts were done wantonly, maliciously, oppressively,  
23   deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
24   members' rights and the representations that Volkswagen made to them, in order to  
25   enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
26   conduct warrants an assessment of punitive damages in an amount sufficient to deter  
27   such conduct in the future, which amount is to be determined according to proof.  
28

**COUNT III  
BREACH OF CONTRACT  
(BASED ON UTAH LAW)**

1866. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1867. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Utah Subclass.

1868. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Utah Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Utah Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Utah Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1869. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Utah Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1870. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Utah Subclass have been damaged in an amount to be proven at trial,



1 which shall include, but is not limited to, all compensatory damages, incidental and  
 2 consequential damages, and other damages allowed by law.

3 **UU. Claims Brought on Behalf of the Vermont Subclass**

4 **COUNT I**  
 5 **VIOLATION OF VERMONT CONSUMER FRAUD ACT**  
 6 **(VT. STAT. ANN. TIT. 9, § 2451 *ET SEQ.*)**

7 1871. Plaintiff Karen Norman (“Plaintiff,” for purposes of all Vermont Subclass  
 8 Counts) incorporates by reference all preceding allegations as though fully set forth  
 9 herein.

10 1872. This claim is brought on behalf of the Vermont Subclass.

11 1873. Volkswagen is a seller within the meaning of VT. STAT. ANN. TIT. 9,  
 12 § 2451(a)(c).

13 1874. The Vermont Consumer Fraud Act (“Vermont CFA”) makes unlawful  
 14 “[u]nfair methods of competition in commerce, and unfair or deceptive acts or  
 15 practices in commerce....” VT. STAT. ANN. TIT. 9, § 2453(a). Volkswagen engaged in  
 16 unfair and deceptive acts or practices in trade or commerce in violation of the  
 17 Vermont CFA by fraudulently installing the “defeat device” to make it appear that its  
 18 CleanDiesel engine systems complied with EPA regulations.

19 1875. In the course of its business, Volkswagen installed the “defeat device”  
 20 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
 21 and otherwise engaged in activities with a tendency or capacity to deceive.  
 22 Volkswagen also engaged in unlawful trade practices by employing deception,  
 23 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
 24 omission of any material fact with intent that others rely upon such concealment,  
 25 suppression or omission, in connection with the sale of Affected Vehicles.

26 1876. Volkswagen has known of its use of the “defeat device” and the true  
 27 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
 28 information until recently.

1 1877. Volkswagen was also aware that it valued profits over environmental  
2 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
3 distributing vehicles throughout the United States that did not comply with EPA  
4 regulations. Volkswagen concealed this information as well.

5 1878. By failing to disclose and by actively concealing the “defeat device” and  
6 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
7 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
8 by presenting itself as a reputable manufacturer that valued safety, environmental  
9 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
10 Volkswagen engaged in unfair and deceptive business practices in violation of the  
11 Vermont CFA.

12 1879. In the course of Volkswagen’s business, it willfully failed to disclose and  
13 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
14 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
15 compounded the deception by repeatedly asserting that the Affected Vehicles were  
16 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
17 be a reputable manufacturer that valued safety, environmental cleanliness and  
18 efficiency, and stood behind its vehicles once they are on the road.

19 1880. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
20 in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness  
21 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
22 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
23 and the true value of the Affected Vehicles.

24 1881. Volkswagen intentionally and knowingly misrepresented material facts  
25 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Vermont  
26 Subclass.

1882. Volkswagen knew or should have known that its conduct violated the Vermont CFA.

1883. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1884. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1885. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1886. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Vermont Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle

1 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
2 the amount its cars pollutes rather than make environmentally friendly vehicles.

3 1887. Plaintiff and the Vermont Subclass suffered ascertainable loss caused by  
4 Volkswagen's misrepresentations and its concealment of and failure to disclose  
5 material information. Plaintiffs who purchased the Affected Vehicles either would  
6 have paid less for their vehicles or would not have purchased or leased them at all.

7 1888. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
8 to refrain from unfair and deceptive acts or practices under the Vermont CFA. All  
9 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
10 value of their vehicles as a result of Volkswagen's deceptive and unfair acts and  
11 practices that occurred in the course of Volkswagen's business.

12 1889. Volkswagen's violations present a continuing risk to Plaintiff as well as  
13 to the general public. Volkswagen's unlawful acts and practices complained of herein  
14 affect the public interest.

15 1890. As a direct and proximate result of Volkswagen's violations of the  
16 Vermont CFA, Plaintiff and the Vermont Subclass have suffered injury-in-fact and/or  
17 actual damage.

18 1891. Plaintiff and the Vermont Subclass are entitled to recover "appropriate  
19 equitable relief" and "the amount of [their] damages, or the consideration or the value  
20 of the consideration given by [them], reasonable attorney's fees, and exemplary  
21 damages not exceeding three times the value of the consideration given by [them]"  
22 pursuant to VT. STAT. ANN. TIT. 9, § 2461(b).

23 **COUNT II**  
24 **FRAUD BY CONCEALMENT**

25 1892. Plaintiffs reallege and incorporate by reference all paragraphs as though  
26 fully set forth herein.

27 1893. This claim is brought on behalf of the Vermont Subclass.  
28

1           1894. Volkswagen intentionally concealed and suppressed material facts  
2 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
3 notwithstanding references in the very model names of the subject vehicles as “Clean  
4 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
5 secret scheme to evade federal and state vehicle emissions standards by installing  
6 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
7 which contributes to the creation of ozone and smog. The software installed on the  
8 vehicles at issue was designed nefariously to kick-in during emissions certification  
9 testing, such that the vehicles would show far lower emissions than when actually  
10 operating on the road. The result was what Volkswagen intended: vehicles passed  
11 emissions certifications by way of deliberately induced false readings. Reportedly,  
12 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
13 vehicles up to 40 times applicable standards.

14           1895. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
15 representations. They had no way of knowing that Volkswagen’s representations were  
16 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
17 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
18 not, unravel Volkswagen’s deception on their own.

19           1896. Volkswagen concealed and suppressed material facts concerning what is  
20 evidently the true culture of Volkswagen—one characterized by an emphasis on  
21 profits and sales above compliance with federal and state clean air laws, and emissions  
22 regulations that are meant to protect the public and consumers. It also emphasized  
23 profits and sales over the trust that Plaintiffs and Class members placed in its  
24 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
25 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
26 intentional manipulation of the system. That’s just a whole other level of not only  
27 lying to the government, but also lying to your consumer. People buy diesel cars from  
28

1 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
2 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
3 want to be spewing noxious gases into the environment.”

4 1897. Necessarily, Volkswagen also took steps to ensure that its employees did  
5 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
6 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
7 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
8 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
9 law, including federal and state clean air laws and emissions regulations, and that its  
10 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
11 representations were material to consumers, both because they concerned the quality  
12 of the Affected Vehicles, including their compliance with applicable federal and state  
13 laws and regulations regarding clean air and emissions, and also because the  
14 representations played a significant role in the value of the vehicles. As Volkswagen  
15 well knew, its customers, including Plaintiffs and Class members, highly valued that  
16 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
17 accordingly.

18 1898. Volkswagen had a duty to disclose its emissions scheme because  
19 knowledge of the scheme and its details were known and/or accessible only to  
20 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
21 maintenance of its scheme, and because Volkswagen knew the facts were not known  
22 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
23 duty to disclose because it made general affirmative representations about the qualities  
24 of its vehicles with respect to emissions standards, starting with references to them as  
25 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
26 and incomplete without the disclosure of the additional facts set forth above regarding  
27 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
28

1 respect to compliance with federal and state clean air laws and emissions regulations,  
2 and its actual practices with respect to the vehicles at issue. Having volunteered to  
3 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
4 partial truth, but the entire truth. These omitted and concealed facts were material  
5 because they directly impact the value of the Affected Vehicles purchased or leased by  
6 Plaintiffs and Class members. Whether a manufacturer's products comply with  
7 federal and state clean air laws and emissions regulations, and whether that  
8 manufacturer tells the truth with respect to such compliance or non-compliance, are  
9 material concerns to a consumer, including with respect to the emissions certification  
10 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
11 members that they were purchasing *clean* diesel vehicles, and certification testing  
12 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
13 process thoroughly.

14 1899. Volkswagen actively concealed and/or suppressed these material facts, in  
15 whole or in part, to pad and protect its profits and to avoid the perception that its  
16 vehicles did not or could not comply with federal and state laws governing clean air  
17 and emissions, which perception would hurt the brand's image and cost Volkswagen  
18 money, and it did so at the expense of Plaintiffs and Class members.

19 1900. On information and belief, Volkswagen has still not made full and  
20 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
21 concealing material information regarding the emissions qualities of its vehicles and  
22 its emissions scheme.

23 1901. Plaintiffs and Class members were unaware of the omitted material facts  
24 referenced herein, and they would not have acted as they did if they had known of the  
25 concealed and/or suppressed facts, in that they would not have purchased purportedly  
26 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
27 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
28



1 light of the information concealed from them. Plaintiffs' and Class Members' actions  
2 were justified. Volkswagen was in exclusive control of the material facts, and such  
3 facts were not known to the public, Plaintiffs, or Class members.

4 1902. Because of the concealment and/or suppression of the facts, Plaintiffs and  
5 Class members have sustained damage because they own vehicles that are diminished  
6 in value as a result of Volkswagen's concealment of the true quality and quantity of  
7 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
8 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
9 branded vehicles and the serious issues engendered by Volkswagen's corporate  
10 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
11 scheme, and the company's callous disregard for compliance with applicable federal  
12 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
13 new or previously owned vehicles would have paid less for their vehicles or would not  
14 have purchased or leased them at all.

15 1903. The value of Plaintiffs' and Class members' vehicles has diminished as a  
16 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
17 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
18 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
19 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
20 value for the vehicles. In addition, Class members are entitled to damages for loss of  
21 use, costs of additional fuel, costs of unused warranties, and other damages to be  
22 proved at trial.

23 1904. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
24 damages in an amount to be proven at trial.

25 1905. Volkswagen's acts were done wantonly, maliciously, oppressively,  
26 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
27 members' rights and the representations that Volkswagen made to them, in order to  
28

1 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
2 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
3 such conduct in the future, which amount is to be determined according to proof.

4 **COUNT III**  
5 **BREACH OF CONTRACT**  
6 **(BASED ON VERMONT LAW)**

7 1906. Plaintiff incorporates by reference all preceding allegations as though  
8 fully set forth herein.

9 1907. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
10 owned vehicle purchasers in the Vermont Subclass.

11 1908. Volkswagen's misrepresentations and omissions alleged herein, including  
12 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
13 defect and/or defective design as alleged herein, caused Plaintiff and the other  
14 Vermont Subclass members to make their purchases or leases of their Affected  
15 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
16 Vermont Subclass members would not have purchased or leased these Affected  
17 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
18 they paid, and/or would have purchased or leased less expensive alternative vehicles  
19 that did not contain the CleanDiesel engine system and which were not marketed as  
20 including such a system. Accordingly, Plaintiff and the other Vermont Subclass  
21 members overpaid for their Affected Vehicles and did not receive the benefit of their  
22 bargain.

23 1909. Each and every sale or lease of an Affected Vehicle by an authorized  
24 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
25 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
26 other Vermont Subclass members defective Affected Vehicles and by misrepresenting  
27 or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
28 defective design, including information known to Volkswagen rendering each

1 Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
2 equipped with a CleanDiesel engine system.

3 1910. As a direct and proximate result of Volkswagen's breach of contract,  
4 Plaintiff and the Vermont Subclass have been damaged in an amount to be proven at  
5 trial, which shall include, but is not limited to, all compensatory damages, incidental  
6 and consequential damages, and other damages allowed by law.

7 **VV. Claims Brought on Behalf of the Washington Subclass**

8 **COUNT I**  
9 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**  
10 **(WASH. REV. CODE ANN. §§ 19.86.010, ET SEQ.)**

11 1911. Plaintiff Troy Ponto ("Plaintiff," for purposes of all Washington Subclass  
12 Counts) incorporates by reference all preceding allegations as though fully set forth  
13 herein.

14 1912. Plaintiff brings this Count on behalf of the Washington Subclass.

15 1913. Volkswagen, Plaintiff, and the Washington Subclass are a "person" under  
16 WASH. REV. CODE ANN. § 19.86.010(1) ("Washington CPA").

17 1914. Volkswagen engaged in "trade" or "commerce" under WASH. REV. CODE  
18 ANN. § 19.86.010(2).

19 1915. In the course of its business, Volkswagen installed the "defeat device"  
20 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
21 and otherwise engaged in activities with a tendency or capacity to deceive.

22 Volkswagen also engaged in unlawful trade practices by employing deception,  
23 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
24 omission of any material fact with intent that others rely upon such concealment,  
25 suppression or omission, in connection with the sale of Affected Vehicles.

26 1916. Volkswagen has known of its use of the "defeat device" and the true  
27 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
28 information until recently.

1           1917. Volkswagen was also aware that it valued profits over environmental  
2 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
3 distributing vehicles throughout the United States that did not comply with EPA  
4 regulations. Volkswagen concealed this information as well.

5           1918. By failing to disclose and by actively concealing the “defeat device” and  
6 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
7 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
8 by presenting itself as a reputable manufacturer that valued safety, environmental  
9 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
10 Volkswagen engaged in deceptive business practices in violation of the Washington  
11 CPA.

12           1919. In the course of Volkswagen’s business, it willfully failed to disclose and  
13 actively concealed the use of the “defeat device” and true cleanliness and efficiency of  
14 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
15 compounded the deception by repeatedly asserting that the Affected Vehicles were  
16 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
17 be a reputable manufacturer that valued safety, environmental cleanliness and  
18 efficiency, and stood behind its vehicles once they are on the road.

19           1920. Volkswagen’s unfair or deceptive acts or practices were likely to and did  
20 in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness  
21 and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and  
22 Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen,  
23 and the true value of the Affected Vehicles.

24           1921. Volkswagen intentionally and knowingly misrepresented material facts  
25 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Wyoming  
26 Subclass.

1 1922. Volkswagen knew or should have known that its conduct violated the  
2 Washington CPA.

3 1923. As alleged above, Volkswagen made material statements about the safety,  
4 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
5 and Audi brands that were either false or misleading.

6 1924. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
7 efficiency, and reliability of the Affected Vehicles and the devaluing of environmental  
8 cleanliness and integrity at Volkswagen, because Volkswagen:

- 9 a. Possessed exclusive knowledge that it valued profits  
10 over environmental cleanliness, efficiency, and  
11 lawfulness, and that it was manufacturing, selling and  
12 distributing vehicles throughout the United States that  
did not comply with EPA regulations;
- 13 b. Intentionally concealed the foregoing from Plaintiffs;  
and/or
- 14 c. Made incomplete representations about the safety,  
15 cleanliness, efficiency and reliability of the Affected  
16 Vehicles generally, and the use of the “defeat device”  
17 and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
facts from Plaintiffs that contradicted these  
representations.

18 1925. Because Volkswagen fraudulently concealed the “defeat device” and the  
19 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
20 of negative publicity once the use of the “defeat device” and true characteristics of the  
21 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
22 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
23 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
24 would be.

25 1926. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
26 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
27 and the Washington Subclass. A vehicle made by a reputable manufacturer of  
28

1 environmentally friendly vehicles is worth more than an otherwise comparable vehicle  
2 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
3 the amount its cars pollutes rather than make environmentally friendly vehicles.

4 1927. Plaintiffs and the Washington Subclass suffered ascertainable loss caused  
5 by Volkswagen's misrepresentations and its concealment of and failure to disclose  
6 material information. Plaintiffs who purchased the Affected Vehicles either would  
7 have paid less for their vehicles or would not have purchased or leased them at all.

8 1928. Volkswagen's actions constituted a generalized course of deception that  
9 impacts the public interest because Plaintiffs and the Washington Subclass members  
10 were injured in exactly the same way as millions of others purchasing and/or leasing  
11 Volkswagen vehicles, and the failure to follow the practices pertaining to motor  
12 vehicle warranties in WASH. REV. CODE § 19.118 is recognized by statute as matters  
13 vitally affecting the public interest. All of the wrongful conduct alleged herein  
14 occurred, and continues to occur, in the conduct of Volkswagen's business and has the  
15 potential for repetition.

16 1929. As a direct and proximate result of Volkswagen's violations of the  
17 Washington CPA, Plaintiffs and the Washington Subclass have suffered injury-in-fact  
18 and/or actual damage.

19 1930. Volkswagen's actions as set forth above induced Plaintiffs and the  
20 Washington Subclass members to purchase their Affected Vehicles from Volkswagen  
21 and/or pay a higher price for their Affected Vehicles than they otherwise would have.

22 1931. Plaintiffs and the Washington Class members were injured as a result of  
23 Volkswagen's conduct. Due to Volkswagen's deceptive or unfair conduct, Plaintiffs  
24 and the Washington Class members overpaid for their Affected Vehicles and did not  
25 receive the benefit of their bargain. Their vehicles have also suffered a diminution in  
26 value.  
27  
28

1932. Pursuant to WASH. REV. CODE § 19.86.095, Plaintiffs will serve the Washington Attorney General with a copy of this complaint as Plaintiffs and the Washington Class members seek injunctive relief.

1933. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Washington Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, attorneys' fees, costs, treble damages, and other damages allowed by law.

### COUNT III FRAUD BY CONCEALMENT

1934. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1935. This claim is brought on behalf of the Washington Subclass.

1936. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles up to 40 times applicable standards.

1937. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were



1 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
2 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
3 not, unravel Volkswagen's deception on their own.

4 1938. Volkswagen concealed and suppressed material facts concerning what is  
5 evidently the true culture of Volkswagen—one characterized by an emphasis on  
6 profits and sales above compliance with federal and state clean air laws, and emissions  
7 regulations that are meant to protect the public and consumers. It also emphasized  
8 profits and sales over the trust that Plaintiffs and Class members placed in its  
9 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
10 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
11 intentional manipulation of the system. That's just a whole other level of not only  
12 lying to the government, but also lying to your consumer. People buy diesel cars from  
13 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
14 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
15 want to be spewing noxious gases into the environment."

16 1939. Necessarily, Volkswagen also took steps to ensure that its employees did  
17 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
18 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
19 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
20 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
21 law, including federal and state clean air laws and emissions regulations, and that its  
22 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
23 representations were material to consumers, both because they concerned the quality  
24 of the Affected Vehicles, including their compliance with applicable federal and state  
25 laws and regulations regarding clean air and emissions, and also because the  
26 representations played a significant role in the value of the vehicles. As Volkswagen  
27 well knew, its customers, including Plaintiffs and Class members, highly valued that  
28

1 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
2 accordingly.

3 1940. Volkswagen had a duty to disclose its emissions scheme because  
4 knowledge of the scheme and its details were known and/or accessible only to  
5 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
6 maintenance of its scheme, and because Volkswagen knew the facts were not known  
7 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
8 duty to disclose because it made general affirmative representations about the qualities  
9 of its vehicles with respect to emissions standards, starting with references to them as  
10 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
11 and incomplete without the disclosure of the additional facts set forth above regarding  
12 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
13 respect to compliance with federal and state clean air laws and emissions regulations,  
14 and its actual practices with respect to the vehicles at issue. Having volunteered to  
15 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
16 partial truth, but the entire truth. These omitted and concealed facts were material  
17 because they directly impact the value of the Affected Vehicles purchased or leased by  
18 Plaintiffs and Class members. Whether a manufacturer's products comply with  
19 federal and state clean air laws and emissions regulations, and whether that  
20 manufacturer tells the truth with respect to such compliance or non-compliance, are  
21 material concerns to a consumer, including with respect to the emissions certification  
22 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
23 members that they were purchasing *clean* diesel vehicles, and certification testing  
24 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
25 process thoroughly.

26 1941. Volkswagen actively concealed and/or suppressed these material facts, in  
27 whole or in part, to pad and protect its profits and to avoid the perception that its  
28

1 vehicles did not or could not comply with federal and state laws governing clean air  
2 and emissions, which perception would hurt the brand's image and cost Volkswagen  
3 money, and it did so at the expense of Plaintiffs and Class members.

4 1942. On information and belief, Volkswagen has still not made full and  
5 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
6 concealing material information regarding the emissions qualities of its vehicles and  
7 its emissions scheme.

8 1943. Plaintiffs and Class members were unaware of the omitted material facts  
9 referenced herein, and they would not have acted as they did if they had known of the  
10 concealed and/or suppressed facts, in that they would not have purchased purportedly  
11 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
12 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
13 light of the information concealed from them. Plaintiffs' and Class Members' actions  
14 were justified. Volkswagen was in exclusive control of the material facts, and such  
15 facts were not known to the public, Plaintiffs, or Class members.

16 1944. Because of the concealment and/or suppression of the facts, Plaintiffs and  
17 Class members have sustained damage because they own vehicles that are diminished  
18 in value as a result of Volkswagen's concealment of the true quality and quantity of  
19 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
20 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
21 branded vehicles and the serious issues engendered by Volkswagen's corporate  
22 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
23 scheme, and the company's callous disregard for compliance with applicable federal  
24 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
25 new or previously owned vehicles would have paid less for their vehicles or would not  
26 have purchased or leased them at all.

1945. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1946. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1947. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON WASHINGTON LAW)**

1948. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1949. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Washington Subclass.

1950. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Washington Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other

1 Washington Subclass members would not have purchased or leased these Affected  
 2 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
 3 they paid, and/or would have purchased or leased less expensive alternative vehicles  
 4 that did not contain the CleanDiesel engine system and which were not marketed as  
 5 including such a system. Accordingly, Plaintiff and the other Washington Subclass  
 6 members overpaid for their Affected Vehicles and did not receive the benefit of their  
 7 bargain.

8 1951. Each and every sale or lease of an Affected Vehicle by an authorized  
 9 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
 10 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
 11 other Washington Subclass members defective Affected Vehicles and by  
 12 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
 13 defect and/or defective design, including information known to Volkswagen rendering  
 14 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
 15 equipped with a CleanDiesel engine system.

16 **WW. Claims Brought on Behalf of the West Virginia Subclass**

17 **COUNT I**  
 18 **VIOLATIONS OF THE CONSUMER CREDIT AND PROTECTION ACT**  
 19 **(W. VA. CODE § 46A-1-101, *ET SEQ.*)**

20 1952. Plaintiff Scott Taylor ("Plaintiff," for purposes of all West Virginia  
 21 Subclass Counts) incorporates by reference all preceding allegations as though fully  
 22 set forth herein.

23 1953. Plaintiff intends to assert a claim under the West Virginia Consumer  
 24 Credit and Protection Act ("West Virginia CCPA") which prohibits "unfair or  
 25 deceptive acts or practices in the conduct of any trade or commerce ...." W. VA.  
 26 CODE § 46A-6-104. Plaintiff will make a demand in satisfaction of W. VA. CODE §  
 27 46A-6-106(b), and may amend this Complaint to assert claims under the CCPA once  
 28

1 the required 20 days have elapsed. This paragraph is included for purposes of notice  
2 only and is not intended to actually assert a claim under the CCPA.

3 **COUNT II**  
4 **FRAUD BY CONCEALMENT**

5 1954. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 1955. This claim is brought on behalf of the West Virginia Subclass.

8 1956. Volkswagen intentionally concealed and suppressed material facts  
9 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
10 notwithstanding references in the very model names of the subject vehicles as “Clean  
11 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
12 secret scheme to evade federal and state vehicle emissions standards by installing  
13 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
14 which contributes to the creation of ozone and smog. The software installed on the  
15 vehicles at issue was designed nefariously to kick-in during emissions certification  
16 testing, such that the vehicles would show far lower emissions than when actually  
17 operating on the road. The result was what Volkswagen intended: vehicles passed  
18 emissions certifications by way of deliberately induced false readings. Reportedly,  
19 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
20 vehicles up to 40 times applicable standards.

21 1957. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
22 representations. They had no way of knowing that Volkswagen’s representations were  
23 false and misleading. As alleged herein, Volkswagen employed extremely  
24 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
25 not, unravel Volkswagen’s deception on their own.

26 1958. Volkswagen concealed and suppressed material facts concerning what is  
27 evidently the true culture of Volkswagen—one characterized by an emphasis on  
28 profits and sales above compliance with federal and state clean air laws, and emissions

1 regulations that are meant to protect the public and consumers. It also emphasized  
2 profits and sales over the trust that Plaintiffs and Class members placed in its  
3 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
4 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
5 intentional manipulation of the system. That’s just a whole other level of not only  
6 lying to the government, but also lying to your consumer. People buy diesel cars from  
7 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
8 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
9 want to be spewing noxious gases into the environment.”

10 1959. Necessarily, Volkswagen also took steps to ensure that its employees did  
11 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
12 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
13 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
14 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
15 law, including federal and state clean air laws and emissions regulations, and that its  
16 vehicles likewise comply with applicable law and regulations. Volkswagen’s false  
17 representations were material to consumers, both because they concerned the quality  
18 of the Affected Vehicles, including their compliance with applicable federal and state  
19 laws and regulations regarding clean air and emissions, and also because the  
20 representations played a significant role in the value of the vehicles. As Volkswagen  
21 well knew, its customers, including Plaintiffs and Class members, highly valued that  
22 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
23 accordingly.

24 1960. Volkswagen had a duty to disclose its emissions scheme because  
25 knowledge of the scheme and its details were known and/or accessible only to  
26 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
27 maintenance of its scheme, and because Volkswagen knew the facts were not known  
28



1 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
2 duty to disclose because it made general affirmative representations about the qualities  
3 of its vehicles with respect to emissions standards, starting with references to them as  
4 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
5 and incomplete without the disclosure of the additional facts set forth above regarding  
6 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
7 respect to compliance with federal and state clean air laws and emissions regulations,  
8 and its actual practices with respect to the vehicles at issue. Having volunteered to  
9 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
10 partial truth, but the entire truth. These omitted and concealed facts were material  
11 because they directly impact the value of the Affected Vehicles purchased or leased by  
12 Plaintiffs and Class members. Whether a manufacturer's products comply with  
13 federal and state clean air laws and emissions regulations, and whether that  
14 manufacturer tells the truth with respect to such compliance or non-compliance, are  
15 material concerns to a consumer, including with respect to the emissions certification  
16 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
17 members that they were purchasing *clean* diesel vehicles, and certification testing  
18 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
19 process thoroughly.

20 1961. Volkswagen actively concealed and/or suppressed these material facts, in  
21 whole or in part, to pad and protect its profits and to avoid the perception that its  
22 vehicles did not or could not comply with federal and state laws governing clean air  
23 and emissions, which perception would hurt the brand's image and cost Volkswagen  
24 money, and it did so at the expense of Plaintiffs and Class members.

25 1962. On information and belief, Volkswagen has still not made full and  
26 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
27  
28

1 concealing material information regarding the emissions qualities of its vehicles and  
2 its emissions scheme.

3 1963. Plaintiffs and Class members were unaware of the omitted material facts  
4 referenced herein, and they would not have acted as they did if they had known of the  
5 concealed and/or suppressed facts, in that they would not have purchased purportedly  
6 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
7 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
8 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
9 were justified. Volkswagen was in exclusive control of the material facts, and such  
10 facts were not known to the public, Plaintiffs, or Class members.

11 1964. Because of the concealment and/or suppression of the facts, Plaintiffs and  
12 Class members have sustained damage because they own vehicles that are diminished  
13 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
14 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
15 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
16 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
17 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
18 scheme, and the company’s callous disregard for compliance with applicable federal  
19 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
20 new or previously owned vehicles would have paid less for their vehicles or would not  
21 have purchased or leased them at all.

22 1965. The value of Plaintiffs’ and Class Members’ vehicles has diminished as a  
23 result of Volkswagen’s fraudulent concealment of its emissions scheme, which has  
24 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and  
25 Class members’ vehicles and made any reasonable consumer reluctant to purchase any  
26 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
27 value for the vehicles. In addition, Class members are entitled to damages for loss of  
28

1 use, costs of additional fuel, costs of unused warranties, and other damages to be  
2 proved at trial.

3 1966. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
4 damages in an amount to be proven at trial.

5 1967. Volkswagen's acts were done wantonly, maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
7 members' rights and the representations that Volkswagen made to them, in order to  
8 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
9 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
10 such conduct in the future, which amount is to be determined according to proof.

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
**(BASED ON WEST VIRGINIA LAW)**

13 1968. Plaintiff incorporates by reference all preceding allegations as though  
14 fully set forth herein.

15 1969. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
16 owned vehicle purchasers in the West Virginia Subclass.

17 1970. Volkswagen's misrepresentations and omissions alleged herein, including  
18 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
19 defect and/or defective design as alleged herein, caused Plaintiff and the other West  
20 Virginia Subclass members to make their purchases or leases of their Affected  
21 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other West  
22 Virginia Subclass members would not have purchased or leased these Affected  
23 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
24 they paid, and/or would have purchased or leased less expensive alternative vehicles  
25 that did not contain the CleanDiesel engine system and which were not marketed as  
26 including such a system. Accordingly, Plaintiff and the other West Virginia Subclass  
27  
28

1 members overpaid for their Affected Vehicles and did not receive the benefit of their  
2 bargain.

3 1971. Each and every sale or lease of an Affected Vehicle by an authorized  
4 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
5 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
6 other West Virginia Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
8 defect and/or defective design, including information known to Volkswagen rendering  
9 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
10 equipped with a CleanDiesel engine system.

11 1972. As a direct and proximate result of Volkswagen's breach of contract,  
12 Plaintiff and the West Virginia Subclass have been damaged in an amount to be  
13 proven at trial, which shall include, but is not limited to, all compensatory damages,  
14 incidental and consequential damages, and other damages allowed by law.

15 **XX. Claims Brought on Behalf of the Wisconsin Subclass**

16 **COUNT I**  
17 **VIOLATIONS OF THE WISCONSIN**  
18 **DECEPTIVE TRADE PRACTICES ACT**  
**(WIS. STAT. § 110.18)**

19 1973. Plaintiff Carlos Ortiz ("Plaintiff," for purposes of all Wisconsin Subclass  
20 Counts) incorporates by reference all preceding allegations as though fully set forth  
21 herein.

22 1974. This claim is brought only on behalf of the Wisconsin Subclass.

23 1975. Volkswagen is a "person, firm, corporation or association" within the  
24 meaning of WIS. STAT. § 100.18(1).

25 1976. Plaintiff and Wisconsin Subclass Members are members of "the public"  
26 within the meaning of WIS. STAT. § 100.18(1). Plaintiff and Wisconsin Subclass  
27 Members purchased or leased one or more Affected Vehicles.  
28

1           1977. The Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”)  
2 prohibits a “representation or statement of fact which is untrue, deceptive or  
3 misleading.” WIS. STAT. § 100.18(1). By fraudulently installing the “defeat device”  
4 to make it appear that its CleanDiesel engine systems complied with EPA regulations,  
5 Volkswagen engaged in unfair and deceptive acts and practices and violated the  
6 Wisconsin DTPA.

7           1978. In the course of its business, Volkswagen installed the “defeat device”  
8 and concealed that its CleanDiesel systems failed EPA regulations as described herein  
9 and otherwise engaged in activities with a tendency or capacity to deceive.  
10 Volkswagen also engaged in unlawful trade practices by employing deception,  
11 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or  
12 omission of any material fact with intent that others rely upon such concealment,  
13 suppression or omission, in connection with the sale of Affected Vehicles.

14           1979. Volkswagen has known of its use of the “defeat device” and the true  
15 nature of its CleanDiesel engine system for at least six years, but concealed all of that  
16 information until recently.

17           1980. Volkswagen was also aware that it valued profits over environmental  
18 cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and  
19 distributing vehicles throughout the United States that did not comply with EPA  
20 regulations. Volkswagen concealed this information as well.

21           1981. By failing to disclose and by actively concealing the “defeat device” and  
22 the true cleanliness and performance of the CleanDiesel engine system, by marketing  
23 its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and  
24 by presenting itself as a reputable manufacturer that valued safety, environmental  
25 cleanliness and efficiency, and stood behind its vehicles after they were sold,  
26 Volkswagen engaged in deceptive business practices in violation of the Wisconsin  
27 DTPA.

1           1982. In the course of Volkswagen's business, it willfully failed to disclose and  
 2 actively concealed the use of the "defeat device" and true cleanliness and efficiency of  
 3 the CleanDiesel engine system and serious defects discussed above. Volkswagen  
 4 compounded the deception by repeatedly asserting that the Affected Vehicles were  
 5 safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to  
 6 be a reputable manufacturer that valued safety, environmental cleanliness and  
 7 efficiency, and stood behind its vehicles once they are on the road.

8           1983. Volkswagen's unfair or deceptive acts or practices were likely to and did  
 9 in fact deceive reasonable consumers, including Plaintiff about the true cleanliness and  
 10 efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi  
 11 brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and  
 12 the true value of the Affected Vehicles.

13           1984. Volkswagen intentionally and knowingly misrepresented material facts  
 14 regarding the Affected Vehicles with an intent to mislead Plaintiff and the Wisconsin  
 15 Subclass.

16           1985. Volkswagen knew or should have known that its conduct violated the  
 17 Wisconsin DTPA.

18           1986. As alleged above, Volkswagen made material statements about the safety,  
 19 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen  
 20 and Audi brands that were either false or misleading.

21           1987. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness,  
 22 efficiency and reliability of the Affected Vehicles and the devaluing of environmental  
 23 cleanliness and integrity at Volkswagen, because Volkswagen:

- 24           a.     Possessed exclusive knowledge that it valued profits  
 25                 over environmental cleanliness, efficiency, and  
 26                 lawfulness, and that it was manufacturing, selling and  
                   distributing vehicles throughout the United States that  
                   did not comply with EPA regulations;
- 27           b.     Intentionally concealed the foregoing from Plaintiffs;  
 28                 and/or

- 1 c. Made incomplete representations about the safety,  
2 cleanliness, efficiency and reliability of the Affected  
3 Vehicles generally, and the use of the “defeat device”  
4 and true nature of the CleanDiesel engine system in  
particular, while purposefully withholding material  
facts from Plaintiffs that contradicted these  
representations.

5 1988. Because Volkswagen fraudulently concealed the “defeat device” and the  
6 true cleanliness and performance of the CleanDiesel engine system, resulting in a raft  
7 of negative publicity once the use of the “defeat device” and true characteristics of the  
8 CleanDiesel engine system finally began to be disclosed, the value of the Affected  
9 Vehicles has greatly diminished. In light of the stigma attached to those vehicles by  
10 Volkswagen’s conduct, they are now worth significantly less than they otherwise  
11 would be.

12 1989. Volkswagen’s fraudulent use of the “defeat device” and its concealment  
13 of the true characteristics of the CleanDiesel engine system were material to Plaintiffs  
14 and the Wisconsin Subclass. A vehicle made by a reputable manufacturer of  
15 environmentally clean vehicles is worth more than an otherwise comparable vehicle  
16 made by a disreputable and dishonest manufacturer of polluting vehicles that conceals  
17 the amount its cars pollutes rather than make environmentally friendly vehicles.

18 1990. Plaintiff and the Wisconsin Subclass suffered ascertainable loss caused  
19 by Volkswagen’s misrepresentations and its concealment of and failure to disclose  
20 material information.

21 1991. Volkswagen had an ongoing duty to all Volkswagen and Audi customers  
22 to refrain from unfair and deceptive acts or practices under the Wisconsin DTPA. All  
23 owners of Affected Vehicles suffered ascertainable loss in the form of the diminished  
24 value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and  
25 practices that occurred in the course of Volkswagen’s business.  
26  
27  
28



1 1992. Volkswagen' violations present a continuing risk to Plaintiffs as well as  
2 to the general public. Volkswagen's unlawful acts and practices complained of herein  
3 affect the public interest.

4 1993. As a direct and proximate result of Volkswagen's violations of the  
5 Wisconsin DTPA, Plaintiff and the Wisconsin Subclass have suffered injury-in-fact  
6 and/or actual damage.

7 1994. Plaintiff and the Wisconsin Subclass are entitled to damages and other  
8 relief provided for under WIS. STAT. § 100.18(11)(b)(2). Because Volkswagen's  
9 conduct was committed knowingly and/or intentionally, Plaintiff and the Wisconsin  
10 Subclass are entitled to treble damages.

11 1995. Plaintiff and the Wisconsin Subclass also seek court costs and attorneys'  
12 fees under WIS. STAT. § 110.18(11)(b)(2).

13 **COUNT II**  
14 **FRAUD BY CONCEALMENT**

15 1996. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 1997. This claim is brought on behalf of the Wisconsin Subclass.

18 1998. Volkswagen intentionally concealed and suppressed material facts  
19 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
20 notwithstanding references in the very model names of the subject vehicles as "Clean  
21 Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a  
22 secret scheme to evade federal and state vehicle emissions standards by installing  
23 software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide,  
24 which contributes to the creation of ozone and smog. The software installed on the  
25 vehicles at issue was designed nefariously to kick-in during emissions certification  
26 testing, such that the vehicles would show far lower emissions than when actually  
27 operating on the road. The result was what Volkswagen intended: vehicles passed  
28 emissions certifications by way of deliberately induced false readings. Reportedly,

1 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these  
2 vehicles at up to 40 times applicable standards.

3 1999. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
4 representations. They had no way of knowing that Volkswagen's representations were  
5 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
6 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
7 not, unravel Volkswagen's deception on their own.

8 2000. Volkswagen concealed and suppressed material facts concerning what is  
9 evidently the true culture of Volkswagen—one characterized by an emphasis on  
10 profits and sales above compliance with federal and state clean air laws, and emissions  
11 regulations that are meant to protect the public and consumers. It also emphasized  
12 profits and sales over the trust that Plaintiffs and Class members placed in its  
13 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
14 *Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
15 intentional manipulation of the system. That's just a whole other level of not only  
16 lying to the government, but also lying to your consumer. People buy diesel cars from  
17 Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,  
18 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't  
19 want to be spewing noxious gases into the environment."

20 2001. Necessarily, Volkswagen also took steps to ensure that its employees did  
21 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
22 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
23 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
24 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
25 law, including federal and state clean air laws and emissions regulations, and that its  
26 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
27 representations were material to consumers, both because they concerned the quality  
28

1 of the Affected Vehicles, including their compliance with applicable federal and state  
2 laws and regulations regarding clean air and emissions, and also because the  
3 representations played a significant role in the value of the vehicles. As Volkswagen  
4 well knew, its customers, including Plaintiffs and Class members, highly valued that  
5 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
6 accordingly.

7 2002. Volkswagen had a duty to disclose its emissions scheme because  
8 knowledge of the scheme and its details were known and/or accessible only to  
9 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
10 maintenance of its scheme, and because Volkswagen knew the facts were not known  
11 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
12 duty to disclose because it made general affirmative representations about the qualities  
13 of its vehicles with respect to emissions standards, starting with references to them as  
14 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
15 and incomplete without the disclosure of the additional facts set forth above regarding  
16 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
17 respect to compliance with federal and state clean air laws and emissions regulations,  
18 and its actual practices with respect to the vehicles at issue. Having volunteered to  
19 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
20 partial truth, but the entire truth. These omitted and concealed facts were material  
21 because they directly impact the value of the Affected Vehicles purchased or leased by  
22 Plaintiffs and Class members. Whether a manufacturer's products comply with  
23 federal and state clean air laws and emissions regulations, and whether that  
24 manufacturer tells the truth with respect to such compliance or non-compliance, are  
25 material concerns to a consumer, including with respect to the emissions certification  
26 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
27 members that they were purchasing *clean* diesel vehicles, and certification testing  
28

1 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
2 process thoroughly.

3 2003. Volkswagen actively concealed and/or suppressed these material facts, in  
4 whole or in part, to pad and protect its profits and to avoid the perception that its  
5 vehicles did not or could not comply with federal and state laws governing clean air  
6 and emissions, which perception would hurt the brand’s image and cost Volkswagen  
7 money, and it did so at the expense of Plaintiffs and Class members.

8 2004. On information and belief, Volkswagen has still not made full and  
9 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
10 concealing material information regarding the emission qualities of its vehicles and its  
11 emissions scheme.

12 2005. Plaintiffs and Class members were unaware of the omitted material facts  
13 referenced herein, and they would not have acted as they did if they had known of the  
14 concealed and/or suppressed facts, in that they would not have purchased purportedly  
15 “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to  
16 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
17 light of the information concealed from them. Plaintiffs’ and Class Members’ actions  
18 were justified. Volkswagen was in exclusive control of the material facts, and such  
19 facts were not known to the public, Plaintiffs, or Class members.

20 2006. Because of the concealment and/or suppression of the facts, Plaintiffs and  
21 Class members have sustained damage because they own vehicles that are diminished  
22 in value as a result of Volkswagen’s concealment of the true quality and quantity of  
23 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual  
24 emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
25 branded vehicles and the serious issues engendered by Volkswagen’s corporate  
26 policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions  
27 scheme, and the company’s callous disregard for compliance with applicable federal  
28

1 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
2 new or previously owned vehicles would have paid less for their vehicles or would not  
3 have purchased or leased them at all.

4 2007. The value of Plaintiffs' and Class members' vehicles has diminished as a  
5 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
6 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
7 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
8 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
9 value for the vehicles. In addition, Class members are entitled to damages for loss of  
10 use, costs of additional fuel, costs of unused warranties, and other damages to be  
11 proved at trial.

12 2008. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
13 damages in an amount to be proven at trial.

14 2009. Volkswagen's acts were done wantonly, maliciously, oppressively,  
15 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
16 members' rights and the representations that Volkswagen made to them, in order to  
17 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
18 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
19 such conduct in the future, which amount is to be determined according to proof.

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON WISCONSIN LAW)**

22 2010. Plaintiff incorporates by reference all preceding allegations as though  
23 fully set forth herein.

24 2011. Plaintiff brings this Count on behalf of new vehicle or certified pre-  
25 owned vehicle purchasers in the Wisconsin Subclass.

26 2012. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's  
28

1 defect and/or defective design as alleged herein, caused Plaintiff and the other  
2 Wisconsin Subclass members to make their purchases or leases of their Affected  
3 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other  
4 Wisconsin Subclass members would not have purchased or leased these Affected  
5 Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
6 they paid, and/or would have purchased or leased less expensive alternative vehicles  
7 that did not contain the CleanDiesel engine system and which were not marketed as  
8 including such a system. Accordingly, Plaintiff and the other Wisconsin Subclass  
9 members overpaid for their Affected Vehicles and did not receive the benefit of their  
10 bargain.

11       2013. Each and every sale or lease of an Affected Vehicle by an authorized  
12 Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or  
13 lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the  
14 other Wisconsin Subclass members defective Affected Vehicles and by  
15 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's  
16 defect and/or defective design, including information known to Volkswagen rendering  
17 each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not  
18 equipped with a CleanDiesel engine system.

19       2014. As a direct and proximate result of Volkswagen's breach of contract,  
20 Plaintiff and the Wisconsin Subclass have been damaged in an amount to be proven at  
21 trial, which shall include, but is not limited to, all compensatory damages, incidental  
22 and consequential damages, and other damages allowed by law.  
23  
24  
25  
26  
27  
28

**YY. Claims Brought on Behalf of the Wyoming Subclass**

**COUNT I  
VIOLATION OF THE WYOMING CONSUMER PROTECTION ACT  
(WYO. STAT. §§ 40-12-101, *ET SEQ.*)**

2015. Plaintiff Brian Mills (“Plaintiff,” for purposes of all Wyoming Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

2016. Plaintiff intends to assert a claim under the Wyoming Consumer Protection Act (“Wyoming CPA”), which makes it unlawful for a person, in the course of its business and in connection with a consumer transaction, to knowingly:

“(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not”; “(v) Represents that merchandise has been supplied in accordance with a previous representation, if it has not...”; “(viii) Represents that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations if the representation is false”; “(x) Advertises merchandise with intent not to sell it as advertised”; or “(xv) Engages in unfair or deceptive acts or practices.” WYO. STAT. § 45-12-105. Plaintiff will make a demand in satisfaction of WYO. STAT. § 40-12-109, and may amend this Complaint to assert claims under the CPA once the required time period has elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the CPA.

**COUNT II  
FRAUD BY CONCEALMENT**

2017. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2018. This claim is brought on behalf of the Wyoming Subclass.

2019. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean



1 Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a  
2 secret scheme to evade federal and state vehicle emissions standards by installing  
3 software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide,  
4 which contributes to the creation of ozone and smog. The software installed on the  
5 vehicles at issue was designed nefariously to kick-in during emissions certification  
6 testing, such that the vehicles would show far lower emissions than when actually  
7 operating on the road. The result was what Volkswagen intended: vehicles passed  
8 emissions certifications by way of deliberately induced false readings. Reportedly,  
9 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these  
10 vehicles up to 40 times applicable standards.

11 2020. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
12 representations. They had no way of knowing that Volkswagen’s representations were  
13 false and gravely misleading. As alleged herein, Volkswagen employed extremely  
14 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
15 not, unravel Volkswagen’s deception on their own.

16 2021. Volkswagen concealed and suppressed material facts concerning what is  
17 evidently the true culture of Volkswagen—one characterized by an emphasis on  
18 profits and sales above compliance with federal and state clean air laws, and emissions  
19 regulations that are meant to protect the public and consumers. It also emphasized  
20 profits and sales over the trust that Plaintiffs and Class members placed in its  
21 representations. As one customer, Priya Shah, put it in a quotation cited by the *Los*  
22 *Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
23 intentional manipulation of the system. That’s just a whole other level of not only  
24 lying to the government, but also lying to your consumer. People buy diesel cars from  
25 Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah,  
26 which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t  
27 want to be spewing noxious gases into the environment.”  
28

1           2022. Necessarily, Volkswagen also took steps to ensure that its employees did  
2 not reveal the details of its scheme to regulators or consumers, including Plaintiffs and  
3 Class members. Volkswagen did so in order to boost the reputations of its vehicles  
4 and to falsely assure purchasers and lessors of its vehicles, including previously owned  
5 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable  
6 law, including federal and state clean air laws and emissions regulations, and that its  
7 vehicles likewise comply with applicable law and regulations. Volkswagen's false  
8 representations were material to consumers, both because they concerned the quality  
9 of the Affected Vehicles, including their compliance with applicable federal and state  
10 laws and regulations regarding clean air and emissions, and also because the  
11 representations played a significant role in the value of the vehicles. As Volkswagen  
12 well knew, its customers, including Plaintiffs and Class members, highly valued that  
13 the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid  
14 accordingly.

15           2023. Volkswagen had a duty to disclose its emissions scheme because  
16 knowledge of the scheme and its details were known and/or accessible only to  
17 Volkswagen, because Volkswagen had exclusive knowledge as to implementation and  
18 maintenance of its scheme, and because Volkswagen knew the facts were not known  
19 to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a  
20 duty to disclose because it made general affirmative representations about the qualities  
21 of its vehicles with respect to emissions standards, starting with references to them as  
22 *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive,  
23 and incomplete without the disclosure of the additional facts set forth above regarding  
24 its emissions scheme, the actual emissions of its vehicles, its actual philosophy with  
25 respect to compliance with federal and state clean air laws and emissions regulations,  
26 and its actual practices with respect to the vehicles at issue. Having volunteered to  
27 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
28

1 partial truth, but the entire truth. These omitted and concealed facts were material  
2 because they directly impact the value of the Affected Vehicles purchased or leased by  
3 Plaintiffs and Class members. Whether a manufacturer's products comply with  
4 federal and state clean air laws and emissions regulations, and whether that  
5 manufacturer tells the truth with respect to such compliance or non-compliance, are  
6 material concerns to a consumer, including with respect to the emissions certification  
7 testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
8 members that they were purchasing *clean* diesel vehicles, and certification testing  
9 appeared to confirm this—except that, secretly, Volkswagen had subverted the testing  
10 process thoroughly.

11 2024. Volkswagen actively concealed and/or suppressed these material facts, in  
12 whole or in part, to pad and protect its profits and to avoid the perception that its  
13 vehicles did not or could not comply with federal and state laws governing clean air  
14 and emissions, which perception would hurt the brand's image and cost Volkswagen  
15 money, and it did so at the expense of Plaintiffs and Class members.

16 2025. On information and belief, Volkswagen has still not made full and  
17 adequate disclosures, and continues to defraud Plaintiffs and Class members by  
18 concealing material information regarding the emissions qualities of its vehicles and  
19 its emissions scheme.

20 2026. Plaintiffs and Class members were unaware of the omitted material facts  
21 referenced herein, and they would not have acted as they did if they had known of the  
22 concealed and/or suppressed facts, in that they would not have purchased purportedly  
23 "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to  
24 drive their heavily polluting vehicles, or would have taken other affirmative steps in  
25 light of the information concealed from them. Plaintiffs' and Class Members' actions  
26 were justified. Volkswagen was in exclusive control of the material facts, and such  
27 facts were not known to the public, Plaintiffs, or Class members.

1           2027. Because of the concealment and/or suppression of the facts, Plaintiffs and  
2 Class members have sustained damage because they own vehicles that are diminished  
3 in value as a result of Volkswagen's concealment of the true quality and quantity of  
4 those vehicles' emissions and Volkswagen's failure to timely disclose the actual  
5 emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-  
6 branded vehicles and the serious issues engendered by Volkswagen's corporate  
7 policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions  
8 scheme, and the company's callous disregard for compliance with applicable federal  
9 and state laws and regulations, Plaintiffs and Class members who purchased or leased  
10 new or previously owned vehicles would have paid less for their vehicles or would not  
11 have purchased or leased them at all.

12           2028. The value of Plaintiffs' and Class Members' vehicles has diminished as a  
13 result of Volkswagen's fraudulent concealment of its emissions scheme, which has  
14 greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and  
15 Class members' vehicles and made any reasonable consumer reluctant to purchase any  
16 of the Affected Vehicles, let alone pay what otherwise would have been fair market  
17 value for the vehicles. In addition, Class members are entitled to damages for loss of  
18 use, costs of additional fuel, costs of unused warranties, and other damages to be  
19 proved at trial.

20           2029. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
21 damages in an amount to be proven at trial.

22           2030. Volkswagen's acts were done wantonly, maliciously, oppressively,  
23 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class  
24 members' rights and the representations that Volkswagen made to them, in order to  
25 enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's  
26 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
27 such conduct in the future, which amount is to be determined according to proof.  
28

**COUNT III  
BREACH OF CONTRACT  
(BASED ON WYOMING LAW)**

2031. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

2032. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Wyoming Subclass.

2033. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Wyoming Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Wyoming Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Wyoming Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

2034. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Wyoming Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1           2035. As a direct and proximate result of Volkswagen's breach of contract,  
2 Plaintiff and the Wyoming Subclass have been damaged in an amount to be proven at  
3 trial, which shall include, but is not limited to, all compensatory damages, incidental  
4 and consequential damages, and other damages allowed by law.

5                           **REQUEST FOR RELIEF**

6           WHEREFORE, Plaintiffs, individually and on behalf of members of the  
7 Nationwide Class and the Subclasses, respectfully request that the Court enter  
8 judgment in their favor and against Defendants, as follows:

- 9           A.     Certification of the proposed Nationwide Class and Subclasses, including  
10 appointment of Plaintiffs' counsel as Class Counsel;
- 11           B.     An order temporarily and permanently enjoining Volkswagen from  
12 continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in  
13 this Complaint;
- 14           C.     Injunctive relief in the form of a recall or free replacement program;
- 15           D.     Injunctive relief in the form of environmental remediation to offset the  
16 harm caused by the illegal emissions of the CleanDiesel engine systems;
- 17           E.     Costs, restitution, damages, including punitive damages, and  
18 disgorgement in an amount to be determined at trial;
- 19           F.     An order requiring Volkswagen to pay both pre- and post-judgment  
20 interest on any amounts awarded;
- 21           G.     An award of costs and attorneys' fees; and
- 22           H.     Such other or further relief as may be appropriate.

23                           **DEMAND FOR JURY TRIAL**

24           Plaintiffs hereby demand a jury trial for all claims so triable.  
25  
26  
27  
28

1 DATED: September 28, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

2 By /s/ Thomas E. Loeser

3 Steve W. Berman (*pro hac vice to be filed*)

4 Thomas E. Loeser (BAR NO. 202724)

1918 8th Avenue, Suite 3300

5 Seattle, Washington 98101

6 Telephone: (206) 623-7292

7 Facsimile: (206) 623-0594

steve@hbsslaw.com

8 toml@hbsslaw.com

9 QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

10 JOHN B. QUINN (BAR NO. 090378)

11 SHON MORGAN (BAR NO. 187736)

12 865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

13 Telephone: (213) 443 3000

14 Facsimile: (213) 443 3100

shonmorgan@quinnemanuel.com

15 Lee Gordon (BAR NO. 174168)

16 HAGENS BERMAN SOBOL SHAPIRO LLP

17 301 N. Lake Avenue, Suite 203

Pasadena, CA 91101

18 Telephone: (213) 330-7150

19 Facsimile: (213) 330-7152

lee@hbsslaw.com

20 Peter B. Fredman

21 LAW OFFICE OF PETER FREDMAN

22 125 University Ave., Suite 102

23 Berkeley, CA 94710

24 Telephone: (510) 868-2626

25 Facsimile: (510) 868-2627

peter@peterfredmanlaw.com

26 *Attorneys for Plaintiffs and the proposed class*  
27 *and subclasses*  
28



HAGENS BERMAN SOBOL SHAPIRO LLP  
STEVE W. BERMAN (*pro hac vice*)  
THOMAS E. LOESER (BAR NO. 202724)  
1918 Eighth Avenue, Suite 330  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594 (fax)  
toml@hbsslaw.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
JOHN B. QUINN (BAR NO. 090378)  
SHON MORGAN (BAR NO. 187736)  
865 South Figueroa Street, 10th Floor  
Los Angeles, California 90017-2543  
Telephone: (213) 443 3000  
Facsimile: (213) 443 3100  
shonmorgan@quinnemanuel.com

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

JESS HILL, KEVIN JENTES, MALIA  
SIAS, ARTHUR SCHAREIN, MICHAEL  
BOZINE, CLIFFORD BROUSSARD,  
VICTORIA MCCLELLAND,  
JEREMIAH HOLDEN, HILDEGARD  
REISER, M.D., SPENCER MOORE,  
JOHN GAUGER, HANAA RIFAEY,  
DEBORAH MARKWARD, JOHN  
BROWN, CHRISTINA PAOLICCHI,  
ADAM FRUGOLI, TRACEY ROSEN,  
JEFFREY BRADY, BOUALIVANH  
PHANHPHONGSANE, BRENDA  
PENNEY, MICHAEL ANTIS, ALEX  
ARCENEUX, G. KEATING PEPPER,  
DEVAN WANG, ROBERT HOOKER,  
MATTHEW OLOVSON, WILLIAM  
MACKEY, EDWARD SIMMONS,

No.

**MALIA SIAS DECLARATION  
RE: CLRA VENUE**

MALIA SIAS DECLARATION RE: CLRA VENUE

1 CHARLES HALL, KOTAB HOLDINGS  
2 LLC, ALAN BRANTING, CHAD  
3 RAMOS, STEVEN BOLDUC, JOSEPH  
4 AVENA, ANDREW MASTERS,  
5 STEVEN KOLPAN, PAUL PURYEAR,  
6 MICHELLE GRAMLING, DAVID  
7 PYLE, HEATHER GREENFIELD,  
8 KYLE BOYLAN, RALPH  
9 MENDENHALL, ALEXANDER  
10 BAITTINGER, ANDREW BELL, GARY  
11 VAN GUILDER, BARRY CROSS,  
12 JUSTIN HOLLOWAY, KELLY KING,  
KAREN NORMAN, ANDREW  
VENTURA, TROY PONTO, SCOTT  
TAYLOR, CARLOS ORTIZ, and BRIAN  
MILLS, on behalf of themselves and all  
others similarly situated,

13 Plaintiffs,

14 v.  
15

16 VOLKSWAGEN GROUP OF  
17 AMERICA, INC., a New Jersey  
18 Corporation, and VOLKSWAGEN AG, a  
19 corporation organized under the laws of  
Germany,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

1 I, MALIA SIAS, hereby declare and state as follows:

2 1. I have personal knowledge of the facts stated herein and, if necessary,  
3 could competently testify thereto.

4 2. I am a Plaintiff in the above-entitled action.

5 3. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support  
6 of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code  
7 § 1780(a).

8 4. This action for relief under Cal. Civ. Code § 1780(a) has been  
9 commenced in a county that is a proper place for trial of this action because  
10 Defendants do business in this District (the Central District of California) and  
11 throughout the State of California.

12 5. The Complaint filed in this matter contains causes of action for violations  
13 of the Consumers Legal Remedies Act against Defendants Volkswagen Group of  
14 America, Inc., a company doing business nationwide and organized under the laws of  
15 the State of New Jersey and Volkswagen Aktiengesellschaft, a company doing  
16 business as Volkswagen Group and/or Volkswagen AG (“Volkswagen AG”), with its  
17 principal place of business in Wolfsburg, Germany and organized under the laws of  
18 Germany. Volkswagen AG is the parent corporation of Volkswagen Group of  
19 America, Inc.

20 6. I own a 2011 VW Golf TDI which I purchased new in Santa Ana,  
21 California.

1 I declare under penalty of perjury under the laws of the State of California that  
2 the foregoing Declaration is true and correct, and was executed by me in the city of  
3 Los Angeles, California, on September 29, 2015.  
4

5  
6 By

  
MALIA SIAS

HAGENS BERMAN SOBOL SHAPIRO LLP  
STEVE W. BERMAN (*pro hac vice to be filed*)  
THOMAS E. LOESER (BAR NO. 202724)  
1918 Eighth Avenue, Suite 330  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com  
toml@hbsslaw.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
JOHN B. QUINN (BAR NO. 090378)  
SHON MORGAN (BAR NO. 187736)  
865 South Figueroa Street, 10th Floor  
Los Angeles, California 90017-2543  
Telephone: (213) 443 3000  
Facsimile: (213) 443 3100  
shonmorgan@quinnemanuel.com

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

JESS HILL, KEVIN JENTES, MALIA  
SIAS, ARTHUR SCHAREIN, MICHAEL  
BOZINE, CLIFFORD BROUSSARD,  
VICTORIA MCCLELLAND,  
JEREMIAH HOLDEN, HILDEGARD  
REISER, M.D., SPENCER MOORE,  
JOHN GAUGER, HANAA RIFAEY,  
DEBORAH MARKWARD, JOHN  
BROWN, CHRISTINA PAOLICCHI,  
ADAM FRUGOLI, TRACEY ROSEN,  
JEFFREY BRADY, BOUALIVANH  
PHANHPHONGSANE, BRENDA  
PENNEY, MICHAEL ANTIS, ALEX  
ARCENEUX, G. KEATING PEPPER,  
DEVAN WANG, ROBERT HOOKER,  
MATTHEW OLOVSON, WILLIAM

No.

**KEVIN JENTES DECLARATION  
RE: CLRA VENUE**

KEVIN JENTES DECLARATION RE: CLRA VENUE

1 MACKEY, EDWARD SIMMONS,  
2 CHARLES HALL, KOTAB HOLDINGS  
3 LLC, ALAN BRANTING, CHAD  
4 RAMOS, STEVEN BOLDUC, JOSEPH  
5 AVENA, ANDREW MASTERS,  
6 STEVEN KOLPAN, PAUL PURYEAR,  
7 MICHELLE GRAMLING, DAVID  
8 PYLE, HEATHER GREENFIELD,  
9 KYLE BOYLAN, RALPH  
10 MENDENHALL, ALEXANDER  
11 BAITTINGER, ANDREW BELL, GARY  
12 VAN GUILDER, BARRY CROSS,  
13 JUSTIN HOLLOWAY, KELLY KING,  
14 KAREN NORMAN, ANDREW  
15 VENTURA, TROY PONTO, SCOTT  
16 TAYLOR, CARLOS ORTIZ, and BRIAN  
17 MILLS, on behalf of themselves and all  
18 others similarly situated,

19  
20 Plaintiffs,

21  
22 v.

23 VOLKSWAGEN GROUP OF  
24 AMERICA, INC., a New Jersey  
25 Corporation, and VOLKSWAGEN AG, a  
26 corporation organized under the laws of  
27 Germany,

28 Defendants.

1 I, KEVIN JENTES, hereby declare and state as follows:

2 1. I have personal knowledge of the facts stated herein and, if necessary,  
3 could competently testify thereto.

4 2. I am a Plaintiff in the above-entitled action.

5 3. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support  
6 of the Class Action Complaint and the claim therein for relief under Cal. Civ. Code  
7 § 1780(a).

8 4. This action for relief under Cal. Civ. Code § 1780(a) has been  
9 commenced in a county that is a proper place for trial of this action because  
10 Defendants do business in this District (the Central District of California) and  
11 throughout the State of California.

12 5. The Complaint filed in this matter contains causes of action for violations  
13 of the Consumers Legal Remedies Act against Defendants Volkswagen Group of  
14 America, Inc., a company doing business nationwide and organized under the laws of  
15 the State of New Jersey and Volkswagen Aktiengesellschaft, a company doing  
16 business as Volkswagen Group and/or Volkswagen AG (“Volkswagen AG”), with its  
17 principal place of business in Wolfsburg, Germany and organized under the laws of  
18 Germany. Volkswagen AG is the parent corporation of Volkswagen Group of  
19 America, Inc.

20 6. I own a 2014 VW Passat TDI SE which I purchased used in Santa Cruz,  
21 California.



1 I declare under penalty of perjury under the laws of the State of California that  
2 the foregoing Declaration is true and correct, and was executed by me in the city of  
3 Ben Lomond, California, on September 18, 2015.  
4

5  
6 By  \_\_\_\_\_

7 KEVIN JENTES  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28